S. Hrg. 100-437

SEMINOLE WATER CLAIMS SETTLEMENT ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1684

TO SETTLE SEMINOLE INDIAN LAND CLAIMS WITHIN THE STATE OF FLORIDA

NOVEMBER 5, 1987
WASHINGTON, DC

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SEMINOLE WATER CLAIMS SETTLEMENT ACT

THURSDAY, NOVEMBER 5, 1987

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:10 p.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Burdick, Daschle, Evans, and McCain.

STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM NORTH DAKOTA

Senator BURDICK (acting chairman). Our first hearing this afternoon is on S. 1684, a bill introduced by Senators Graham and Chiles of Florida, to settle certain land claims by the Seminole Tribe of Florida.

The Seminole Tribe occupies three Federal reservations in Florida and one State reservation. The State reservation, East Big Cypress, borders a Federal reservation known as West Big Cypress. Some years ago the tribe lost the use of much of the land in the East Big Cypress reservation because the State of Florida issued a water shortage and flowage easement over the land without the tribe's consent.

The legislation we are considering today will settle a suit filed by the tribe against the State of Florida and will settle other outstanding issues as well. Under the agreement embodied in the bill the tribe will release its claim to some of the lands in return for a cash payment from the State of Florida. Additionally, the tribe is authorized to sell another parcel of land to the State that will be used for the Everglades restoration project. The remaining land on the East Big Cypress reservation will be transferred to the Secretary of the Interior, to be held in trust for the tribe as part of the larger West Big Cypress Reservation.

The settlement also incorporates a resolution of certain water issues between the tribe, the South Florida Water District, and the State.

Congressional approval of the settlement through enactment of S. 1684 is necessary even though there is no Federal monetary or other contribution to the settlement because the tribe will be authorized to sell some of its land, and some of its land will be taken into Federal trust.

[The text of S. 1684 follows:]

II

100TH CONGRESS
1ST SESSION

S. 1684

To settle Seminole Indian land claims within the State of Florida, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1987

Mr. GRAHAM (for himself and Mr. CHILES) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To settle Seminole Indian land claims within the State of Florida, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Seminole Indian Land Claims Settlement Act of 1987".

FINDINGS AND POLICY

SEC. 2. Congress finds and declares that—

(1) there is pending before the United States District Court for the southern district of Florida a lawsuit by the Seminole Tribe which involves certain lands within the State and there are also claims by the tribe

to other areas of Florida by virtue of an 1839 Executive order of the President and by right of non-extinguishment of aboriginal possession which has been asserted but not filed in court;

(2) the pendency of this lawsuit and these claims may result in economic hardships for residents of the State by clouding the titles to lands in the State, including lands not now involved in the lawsuit;

(3) the pendency of this lawsuit and these claims also have clouded the easement rights of the South Florida Water Management District in lands necessary for use as a water flowage and storage area, which is part of a federally authorized project for flood control and water management in central and southern Florida, and which is being used to provide and regulate a water supply for the residents of south Florida;

(4) Congress has appropriated, by the Second Supplemental Appropriations Act 1976 (90 Stat. 597), the sum of $16,000,000 in satisfaction of an award to the Seminole Nation as it existed in Florida on September 18, 1823, for the value of Florida lands taken from the Seminole Nation by the United States Government;

(5) the State, the district, and the tribe have executed agreements for the purposes of resolving tribal land claims and settling the lawsuit—

(A) which include conveyance of land and payment of consideration to the tribe; and

(B) which require implementing legislation by the Congress of the United States and the Legislature of the State of Florida;

(6) Congress shares with the parties to such agreements a desire to settle these Indian claims in the State of Florida without additional cost to the United States;

(7) there is considerable uncertainty as to the nature and extent of the water rights of the tribe, and that continued controversy over this should be settled by agreement; and

(8) the State, the district, and the tribe have entered into a compact which, if approved by Congress and the Florida Legislature, creates specifically defined water rights in lieu of the undefined water rights claimed by the tribe.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

(1) "tribe" means the Seminole Tribe of Indians of Florida or Seminole Tribe of Florida, a tribe of American Indians recognized by the United States and

organized under section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. 476) and recognized by the State of Florida pursuant to chapter 285, Florida Statutes, and its successors;

(2) "State" means the State of Florida and its agencies, political subdivisions, constitutional officers, officials of its agencies and subdivisions and their successors;

(3) "district" means the South Florida Water Management District, the agency of the State of Florida created by chapter 25270, laws of Florida (1949) to operate pursuant to chapter 373 Florida Statutes, and its successors;

(4) "Secretary" means the Secretary of the Interior;

(5) "lands or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish;

(6) "Settlement Agreement" means the instrument—

(A) executed by the Seminole Tribe, the State of Florida, and the South Florida Water Management District; and

(B) which will be presented for approval by all three parties to the United States District Court for the southern district of Florida for the purpose of terminating the lawsuit entitled Seminole Tribe of Indians of Florida, v. State of Florida, et al., (Docket No. 78-6116-CIV), and for the extinguishment of rights to all potential or unsettled claims which the tribe may have to lands or natural resources in the State and the purchase of certain tribal interests in real property;

(7) "settlement funds" means those funds which the State of Florida and the South Florida Water Management District have agreed to pay to the tribe under the Settlement Agreement; and

(8) "Compact" means the Compact incorporated in the Settlement Agreement between the tribe, the State, and the district, which specifically defines the nature and extent of Seminole water rights and the manner of their use within the confines of the area of the district.

FINDINGS BY THE SECRETARY

SEC. 4. (a) Section 5 shall not take effect until 180 days after the effective date of this Act, or the date the last of the events described in subsection (b) have occurred and the Secretary so finds, whichever date occurs later.

(b) The events referred to in subsection (a) are—

(1) the State and district pay settlement funds pursuant to the terms of the Settlement Agreement for the case captioned Seminole Tribe of Indians of Florida v. State of Florida et al., or equivalent consideration by land exchange to the tribe; and

(2) the State enacts appropriate legislation to carry out the commitments under the Settlement Agreement including the compact between the State, the district and the tribe, and the State and the district have given the waiver specified in paragraph 5c of such agreement.

APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF CLAIMS AND ABORIGINAL TITLE INVOLVING FLORIDA INDIANS

SEC. 5. (a)(1) Effective on the date of enactment of this Act, the Congress does hereby approve the Settlement Agreement, including the compact, and any exhibits attached thereto.

(2) Subject to the provisions of section 4, the Secretary shall publish findings required by section 4 and the Settlement Agreement in the Federal Register, and upon such publication—

(A) The transfers, waivers, releases, relinquishments and other commitments made by the tribe in the Settlement Agreement with the State and the district, including the compact provided for in the Settlement Agreement, shall be in full force and effect on the terms and conditions stated in such settlement.

(B) The transfers, waivers, releases, relinquishments and other commitments validated by subparagraph (A) of this subsection, and the transfers and extinguishments approved and validated by paragraphs (1) and (2) of subsection (b) shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians including but not limited to the Trade and Intercourse Act of 1790, Act of July 22, 1790 (25 U.S.C. 177, ch. 33, sec. 4, 1 Stat. 137).

(b)(1)(A) Subject to subparagraph (B), all claims to lands within the State based upon aboriginal title by the tribe or any predecessor or successor in interest, are hereby extinguished. Any transfer of lands or natural resources located anywhere within the State, including transfers pursuant to a statute or treaty with any State or the United States, by, from, or on behalf of the tribe or any predecessor or successor in interest, shall be deemed to be in full force and effect, as provided in subsection (a)(2).

(B) Nothing in this paragraph shall be construed as extinguishing any aboriginal right, title, interest, or claim to lands or natural resources solely to the extent of the rights or interests defined as "excepted interests" in paragraph 4a of the Settlement Agreement between the tribe, State and the district.

(2) By virtue of the approval of a transfer of lands or natural resources effected by this section, or an extinguishment of aboriginal title effected thereby, all claims against the United States, the State or subdivision thereof, or any other person or entity, by the tribe or any predecessor or successor in interest, arising subsequent to the transfer and based upon any interest in or right involving such lands or natural resources, including claims for trespass damages or claims for use and occupancy, shall be extinguished as of the date of the transfer.

(3) Nothing in this Act shall be construed as extinguishing any right, title, interest, or claim to lands or natural resources in the State based on use and occupancy or acquired under Federal or State law by any individual Indian which is not derived from or through the tribe, its predecessor or predecessors in interest, or some other American Indian tribe.

(4)(A) Any Indian, Indian nation, or tribe of Indians, other than the Seminole Tribe as defined in section 3(1), or any predecessor or successor in interest, or any member thereof, whose transfer of lands or natural resources is approved or whose aboriginal title or claims is extinguished by paragraph (1) or (2) of this subsection may, within a period of 180 days after publication of the Secretary's finding pursuant to subsection (a) of this section, bring an action against the State and the United States in the United States District Court for the southern district of Florida. Such action shall be in lieu of a suit against any other person, agency, or political subdivision on a cause of action which may have existed in the absence of this subsection.

(B) In any action filed under this paragraph, the remedy shall be limited to a proportionate share in the award of $16,000,000 appropriated by Congress under the Second Supplemental Appropriations Act, 1976 in satisfaction of a judgment against the United States in favor of the Seminole Nation, as it existed in Florida on September 18, 1823, for the value of Florida lands.

SPECIAL PROVISIONS FOR SEMINOLE TRIBE

SEC. 6. (a) Notwithstanding any clouds on title, the Secretary is authorized and directed, as soon as practicable after the date of enactment of this Act, to accept the transfer to the United States, to be held in trust and as a reservation for the use and benefit of the Seminole Tribe of Florida, the approximate 15 sections of land being described as follows:

> Beginning in the southwest corner of section 31, township 48 south, Range 35 east; thence easterly along the south border of sections 31, 32 and 33, township 48 south, Range 35 east, to the westernmost boundary of the levee 28 works in section 33, township 48 south, Range 35 east; thence continuing north along the westernmost boundary of the levee 28 works to the point at which the westernmost boundary of the levee 28 works intersects the southernmost boundary of the levee 4 works in section 9, township 48 south, Range 35 east; thence continuing westerly along the southernmost boundary of the levee 4 works to the point at which the southernmost boundary of the levee 4 works intersects the dividing line between township 48 south, Range 35 east at the Broward County and Hendry County line; and thence continuing south along said line to the point of beginning; said lands situate, lying and being in Broward County, Florida.

The transfer made under this subsection shall be subject to Florida Statutes section 285.16, as well as the provisions of this section and consistent with the deletion of all lands in said area transferred to the State and the district under paragraphs 4d and 4e of the Settlement Agreement.

(b) Before the expiration of the 2-year period beginning on the date of enactment of this Act, the Secretary shall—

(1) conduct a cadastral survey of the Seminole Federal Reservations in Florida, including all lands taken into trust as reservations under the authority of this Act;

(2) publish the correct legal descriptions of the Seminole Reservations in the Federal Register within 180 days after the survey is completed.

(c) If, pursuant to paragraph 6 of the Settlement Agreement, there is a subsequent agreement between the tribe, the State, and the district providing that lands exchanged with the tribe or acquired by the tribe may be taken into Federal trust as a reservation for the tribe, the Secretary shall accept the transfer of such lands to the United States, to be held in trust for the use and benefit of the tribe pursuant to the terms and conditions of the subsequent agreement.

(d)(1) Notwithstanding the conveyance of any lands by the State to the United States in trust for the tribe, the assumption of jurisdiction in favor of the State contained in section 285.16, Florida Statutes, pursuant to section 7 of the Act of August 15, 1953, (67 Stat. 588; Public Law 280), shall continue in full force and effect on such lands unless the State shall retrocede such civil or criminal jurisdiction in whole or in part. The laws of Florida relating to alcoholic beverages (chapters 561, 562, 563, 564, and 565, Florida Statutes), gambling (chapter 849, Florida Statutes), sale of cigarettes (chapter 210, Florida Statutes), and their successor laws, shall have the same force and effect within said transferred lands as they have elsewhere within the State. The State shall also have jurisdiction over offenses committed by or against Indians under said laws to the same extent the State has jurisdiction over said offenses committed elsewhere within the State.

(2) Nothing in this subsection shall be construed as permitting the exercise of the above jurisdiction by the State regarding matters to which section 1162(b) of title 18, United States Code, and section 1360(b) of title 28, United States Code, apply.

(3) The scope of tribal sovereignty over transferred lands, with the specific exceptions of law relating to cigarettes, gambling and alcohol described in this subsection, shall be as required by applicable law with regard to existing tribal lands held in reservation or Federal trust status. Such transfer shall not confer upon the tribe, or upon the lands within the reservation, any additional water rights. Tribal water rights shall be deemed to be defined in the compact.

WATER RIGHTS COMPACT

SEC. 7. The compact defining the scope of Seminole water rights and their utilization by the tribe shall have the force and effect of Federal law.

JUDICIAL REVIEW

SEC. 8. (a) Notwithstanding any other provision of law, any action to contest the constitutionality of this Act shall be barred unless the complaint is filed within 180 days after the date of enactment of this Act. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the southern district of Florida.

(b) Notwithstanding any present immunity from suit enjoyed by any of the parties, jurisdiction regarding any controversy arising under the Settlement Agreement or compact or private agreement between the tribe and any third party entered into under authority of the compact is hereby vested in the United States District Court for the southern district of Florida. Such jurisdiction shall be exclusive except that the court shall not have jurisdiction to award money damages against the State, the district or the tribe. Proceedings in the district court under this section shall be expedited consistent with sound judicial discretion.

REVOCATION OF SETTLEMENT

SEC. 9. In the event the Settlement Agreement or any part thereof is ever invalidated—

(1) the transfers, waivers, releases, relinquishments and any other commitments made by the State, the tribe, or the district in the Settlement Agreement shall no longer be of any force or effect;

(2) section 5 shall be inapplicable as if such section was never enacted with respect to the lands, interests in lands, or natural resources of the tribe and its members; and

(3) the approvals of prior transfers and the extinguishment of claims and aboriginal title of the tribe otherwise effected by section 5 shall be void ab initio.

EFFECTIVE DATE

SEC. 10. This Act shall take effect upon the date of its enactment.

Senator **Burdick**. Our first witness this afternoon will be Senator Chiles. Senator Chiles, you are recognized.

STATEMENT OF HON. LAWTON CHILES, U.S. SENATOR FROM FLORIDA

Senator **Chiles**. Thank you, Mr. Chairman. I want to thank you and the committee for the timely consideration of S. 1684, the Seminole Indian Claims Settlement Act of 1987. I certainly appreciate your cooperation and the opportunity to offer testimony in support of the bill.

I was pleased to join Senator Graham in sponsoring this bill. Congressman Tom Lewis is sponsoring similar legislation in the House of Representatives. I know that as Florida's Governor, Senator Graham was instrumental in the parties coming to terms. Most importantly, were it not for the patience and hard work of the Seminole Indians, their attorneys, the South Florida Water Management District and the State, we would not be here today to consider this settlement agreement.

In light of the current budget crisis I am pleased to report that this settlement will impose no new costs to the Federal Government. But if the litigation continues because Congress does not approve this legislation promptly, the United States would be obligated, under its responsibility to protect the trust resources of the Seminole Tribe, to finance the tribe's suit. This could be expensive.

Considering the months and months of hard work by all the involved parties I am happy to see that the land claims settlement has progressed this far and, as we will hear today, all the necessary preconditions to Congressional consideration of this act have been satisfied. The Seminole Tribe, the Water Management District, both houses of the Florida Legislature, Governor Martinez, the Florida cabinet, and the Bureau of Indian Affairs have given the compact their approval. The Seminole Tribe has assured me that they are satisfied with the terms of the agreement. Now, all that remains is approval by the Congress and the Federal District Court having jurisdiction over the pending suit.

This act settles a number of longstanding disputes between the Seminole Indian Tribe, Florida, and the South Florida Water Management District. Specifically, it settles the pending lawsuit against the State regarding land claims and extinguishes other land claims never litigated dating back to 1839. The act requires the Seminole Tribe to relinquish some of its rights to certain lands, some of which are critical to Florida's Save Our Everglades restoration program. The State would transfer part of its East Big Cypress State Reservation into Federal trust for the benefit of the Seminole Tribe. Also, the Seminoles will receive a settlement from the State and the South Florida Water Management District for water development so as to enable the tribe to further develop its agricultural base.

The act is unprecedented in that it contains a water rights compact. This feature makes it unique because never in our history has there been a large-scale water rights settlement between tribal and State authorities before litigation was filed. This compact defines the water rights of the Seminole tribe, and all other involved parties. It guarantees the Seminole Tribe a fixed percentage of water, but binds the tribe to abide by State law in its use. Also, the compact obligates the Water Management District to assist the tribe in the development of its resources so that the tribe may become economically self-sufficient. The water rights compact stands as a shining example of an alternative to costly and time-consuming litigation. It sets a precedent which hopefully others involved in similar disputes will follow.

The act has been described as a "win-win" proposition. The settlement apparently benefits all parties involved—that is, the Seminole Indian Tribe, the State of Florida, and the South Florida Water Management District. Agricultural and urban customers of the South Florida Water Management District, including residents of Miami, Hollywood and Fort Lauderdale, also stand to benefit from Congressional approval of the settlement.

The settlement also enjoys the enthusiastic support of environmentalists throughout Florida who are concerned about water conservation and the restoration of the Everglades.

Mr. Chairman, once again, I appreciate the opportunity to present testimony. I am happy to join with Senator Graham and Congressman Lewis, and I hope the committee can clear the bill for action by the full Senate before the session ends.

[Prepared statement of Senator Chiles appears in the appendix.]

Senator McCain (acting chairman). Thank you, Senator Chiles. I have no questions; I would like to comment, though, that it's very pleasant to see a bill come before this committee on which there are no Federal moneys asked for. It's not only pleasant, it's astonishing.

Senator Chiles. It is also one in which all parties are in agreement. That's something we look forward to also, Mr. Chairman.

Senator McCain. Indeed. And I would like to express my appreciation for the enormous amount of leadership that you have displayed on this issue. I would suggest that we probably would not be here were it not for the efforts of you, Senator Graham, and Congressman Lewis. I hope that we can get this bill done today and to the floor of the Senate as soon as possible.

Could I just say additionally, as a citizen of the State of Arizona, it's been a pleasure for us to be able to deal with you in regard to the Phoenix Indian School and the land in the Everglades, on which I think we are close to arriving at a resolution.

Senator Chiles. That's good news, Mr. Chairman.

Senator McCain. I think we're moving forward. Thank you again.

Senator Chiles. Thank you very much.

Senator McCain. Since Senator Graham has not arrived, Congressman Lewis, would you care to go ahead?

STATEMENT OF HON. TOM LEWIS, U.S. REPRESENTATIVE FROM FLORIDA

Mr. Lewis. Thank you, Mr. Chairman. It is nice to be over here on this side and see you chairing the committee today. If you do have a copy of the agenda, there is a typographical error; I am still wearing the same blanket as when you and I came into Congress. [Laughter.]

Mr. Chairman, I would like your leave to provide my full testimony to the committee and just summarize if I may, sir.

Mr. Chairman, I appreciate this opportunity to testify on behalf of S. 1684, the Seminole Indian Land Claims Settlement Act. This is legislation sponsored by my Florida colleagues, Senator Bob Graham and Senator Lawton Chiles. As sponsor of the companion legislation in the House of Representatives and being the House Member who represents two of the three Federal Seminole Indian Reservations in Florida, I am proud to support this important measure.

This legislation is vitally important not only to the Seminole Indian Tribe of Florida, but also to a variety of other Floridians whose water and property rights are beneficially affected by the settlement this bill approves. Under this agreement longstanding claims of the Seminole Tribe to land and water rights will be settled to the mutual benefit of the tribe and the citizens of Florida.

The settlement which this bill is intended to ratify will impose no new costs on the United States. However, if litigation were to continue because the Congress does not act promptly to approve this legislation, the results could be very expensive, indeed. Under its responsibility to protect the trust resources of the Seminole Indian Tribe, the United States would be obligated to support the tribe's lawsuit financially.

This settlement or compact has already been approved by Florida Governor Bob Martinez and the Florida cabinet, both houses of the State legislature in Florida, the South Florida Water Management District, and by the Seminole Indian Tribe itself. The Seminole Indian Land Claims Settlement Act merely expresses necessary Congressional approval of the settlement and, as I have stated before and as you mentioned, Mr. Chairman, will involve no Federal payments.

However, if not fully approved soon, this settlement could begin to unravel, costing the tribe, the people of Florida, and the taxpayers of the United States significant amounts of money. Therefore, Mr. Chairman, I welcome this committee's attention to S. 1684 and urge expeditious movement on this very important legislation.

[Prepared statement of Mr. Lewis appears in the appendix.]

Senator McCain. Thank you very much, Tom. I would like to express my appreciation for your action and efforts on behalf of this legislation but also for your continued commitment to the Seminole Indians and all Native Americans, and I am very appreciative of all you have done and I am sure they are, also.

I am informed by staff that they are hoping to get this bill marked up on the 19th. At that time I hope we could report it favorably to the floor of the Senate and have it passed in an expeditious fashion. I and the other members of this committee understand the necessity for speedy action on this legislation.

Mr. Lewis. Thank you, Mr. Chairman.

Senator McCain. Thank you. It's great to see you again.

Mr. Lewis. It's great to see you and nice to be with you again.

Senator **McCain**. And now for our distinguished colleague, the former Governor—truly great Floridian Governor—Senator Graham.

STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM FLORIDA

Senator **Graham**. Thank you, Mr. Chairman, members of the committee. I appreciate this opportunity to testify on behalf of the Seminole Indian Land Claims Settlement Act of 1987.

This is an event which has been long in coming. It represents the conclusion of a dispute which ranges back into the earliest territorial years of our State. I am pleased to have this opportunity to discuss a bill which settles these longstanding disputes.

In September, Senator Chiles and I introduced the Seminole Indian Land Claims Settlement Act of 1987 which will compensate the Seminoles for land taken by the Federal Government. In addition to this, it will also resolve a Seminole grievance over a critical water flowage easement controlled by the South Florida Water Management District. It will secure the continued use of that easement, which is essential for the provision and regulation of the water supply for the residents of south Florida coastal cities, such as Miami and Fort Lauderdale, and of large agricultural areas.

By monetary compensation and by the transfer of some lands to the United States to be held in trust for the tribe, an 11-year dispute over water rights and land claims will be put to rest. That action will remove the cloud over many land titles in Florida and the attendant hardship to present landholders.

Under this act, Mr. Chairman, a 9,600-acre tract of land which is now in the East Big Cypress Reservation will be added to an existing Seminole reservation and held as a Federal reservation for the Seminole Tribe. Those lands will be subject to Florida civil and criminal law, and specifically, Florida laws on alcoholic beverages, gambling, and cigarette sales.

Seminole land and water rights in Florida have been disputed since the 1839 Presidential Executive Order which attempted to resolve the claims that the Seminoles had nearly 150 years ago.

Both Senator Chiles, who is an enthusiastic cosponsor of this legislation, myself, and Congressman Lewis are relieved to have at last reached an accommodation agreeable to all of these parties. Expeditious passage of this legislation will allow us to finally put this longstanding dispute to rest.

Mr. Chairman, I thank you and the members of the committee for your prompt consideration of the Seminole Indian Land Claims Settlement Act of 1987.

[Prepared statement of Senator Graham appears in the appendix.]

Senator **Graham**. Mr. Chairman, I would request permission to have inserted in the record a letter which has been submitted as of November 4 from our Governor, the Honorable Bob Martinez, in support of this legislation.

Senator **McCain**. Without objection, Governor Martinez' letter will be made a part of the record.

[Letter from Governor Martinez appears in the appendix.]

Senator McCain. I thank you, Senator Graham. I believe members of this committee are cognizant of the years that you have devoted to this issue and we are very pleased to help in bringing this issue to a successful conclusion. Your efforts have been very important in this area. Thank you for being with us.

Senator Graham. Thank you very much, Mr. Chairman.

Senator McCain. Mr. Frank Ryan.

Mr. Ryan, who do you have with you?

STATEMENT OF FRANK A. RYAN, DEPUTY TO THE ASSISTANT SECRETARY OF INDIAN AFFAIRS FOR TRUST AND ECONOMIC DEVELOPMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY ERIC WILSON, WATER RESOURCES STAFF

Mr. Ryan. Good afternoon, Mr. Chairman. I have Eric Wilson with me from my Water Resources staff.

Senator McCain. Please proceed.

Mr. Ryan. Thank you. If you don't mind I'd like to enter my full statement for the record and give an abbreviated summary.

Senator McCain. Without objection, your entire statement will be made a part of the record.

Mr. Ryan. Thank you.

I am pleased to be here today to present the views of the Administration on S. 1684, to settle Seminole Indian land claims within the State of Florida, and for other purposes. And I would like to summarize the statement.

Essentially, we do support enactment of S. 1684, with amendments which we are recommending and which are part of our full statement.

S. 1684 provides for Federal approval and implementation of a land claim, settlement agreement and a water compact entered into by the Seminole Tribe of Florida with the State of Florida and the South Florida Water Management District. The bill does not call for any payment of Federal funds or any disposal of Federal assets under the agreement or compact. It does provide for the Secretary of the Interior to assume the role of trustee for certain lands that the State has maintained as an Indian reservation, and for those and other lands to be surveyed.

Section 5(b)(2) provides that any Seminole tribal claims related to the land and resources involved in that extinguishment or validation but arising after the effective date, including claims for trespass damages or use and occupancy, are also extinguished. We are recommending an amendment to ensure that the approval of the settlement agreement and compact by the Congress does not create any claims by the tribe against the United States or others, but preserves any tribal claims arising under the agreement or compact.

Section 5(b)(4)(B) addresses a previously-appropriated $16 million judgment award. The $16 million award is for the benefit of the Seminoles in Florida and in Oklahoma. Because of a dispute between the Seminole Tribe in Florida and the Seminole Nation of Oklahoma over the division of the award, the Congress has not enacted the legislation needed to divide the award and authorize the use of the funds. The investment income on the award has increased the total amount now available for use and distribution to over $40 million. Since the Seminole Nation of Oklahoma is not a party to this settlement agreement, its interest in the award should not be used. Moreover, we do not believe that the award for a Seminole claim against the United States should be used as a pool to pay claims against the State or Federal Governments. Therefore, we recommend deleting Section 5(b)(4)(B).

Section 5, in providing for the extinguishments and validations, refers to the Seminole Tribe of Florida "or any predecessor * * * in interest." This language would seem to include any interest the Seminole Nation of Oklahoma may have remaining in Florida from before the division of the Seminoles into the Florida and Oklahoma groups. Section 5(b)(4) would provide the Seminole Nation of Oklahoma a chance to bring any claims they believe they may have if they do so within 180 days. Although it does not appear to us that there is any remaining basis for such a claim, we believe that the Congress should consider the views of the Seminole Nation of Oklahoma since they were not a party to the settlement agreement. In addition, we recommend that the bill be amended to change the 180 days to one year to provide a more reasonable period of time for any claims to be brought.

Section 6(a) directs the Secretary to accept from the State the transfer of approximately 15 sections of land, to be held in trust and as a reservation for the use and benefit of the Seminole Tribe of Florida. The land, which has been a State reservation for the tribe, would continue to be subject to the criminal and civil jurisdiction of the State of Florida. The amendments attached to my statement provide for the deletion of this latter language at the end of Section 6(a) because the subject is dealt with in greater detail in Section 6(d).

Regarding the cadastral survey which is addressed in Section 6(b), we understand some of the land was surveyed by the Bureau of Land Management in 1975, and we do not believe that another survey of that land would be required. We are requesting an amendment to make it clear that unnecessary surveys are not required.

In addition, we estimate that surveying the remainder of the lands would cost about $300,000, which could be accommodated by diversion of funding from survey work on other Indian lands. However, if the Congress chooses to impose this priority on the Secretary, we are requesting an amendment to extend the period for the surveys to 3 years because the work can be accomplished more cost-effectively over that period of time. The Bureau of Indian Affairs anticipates that there would be no additional resources required above the current budgeted level to provide services to the tribe as the result of enactment of this settlement.

Section 6(c) requires the Secretary to take into trust for the tribe any land acquired under a subsequent agreement with the State or Water District, providing that the land may be taken in Federal trust as a reservation for the tribe and that the land would be held in trust pursuant to the terms and conditions of the subsequent agreement. We are requesting an amendment to limit the amount of land required to be taken into trust to the amount of land that the tribe is transferring to the State under the settlement agreement because we understand that the purpose of the provision is to facilitate the restoration of the tribe's land base. In addition, the amendment would avoid the possibility of the imposition of an unreasonable burden on the United States, such as would be the case, for example, in a transfer to the Secretary in trust of scattered tracts or land containing toxic waste materials. The amendment would also require that the land be in Florida and agricultural in nature.

Section 7 provides that the water compact shall have the same force and effect as Federal law. We are requesting an amendment to clarify that the provision is for purposes of the enforcement of the tribe's rights and obligations under the compact.

I would like to note that we believe that the water rights compact is unique and important for several reasons. To my knowledge, it's the first serious attempt to define Indian tribal water rights in the Eastern United States. It is also unique because it illustrates a possibility of settling a significant Indian water rights issue without resorting to litigation. To our knowledge, this is the only compact or agreement where such a settlement has been accomplished without years of litigation preceding the settlement. This is entirely consistent with the Administration's policy that the negotiated settlement of Indian water rights is the better course of action to pursue rather than protracted litigation to resolve outstanding claims.

It is also important that we note that the Seminole compact would not set a precedent for the water rights claims or the water rights-related expectations of any other tribe. Given the unique nature of water law in Florida, which is the only State in the east that has fully adopted a permit system of water research management and has abolished private riparian rights, the compact—which harmonizes the rights of the Seminole Tribe with that system—would have no specific application elsewhere.

This concludes my summary statement. I would be happy to answer any questions that your committee may have.

[Prepared statement of Mr. Ryan appears in the appendix.]

Senator McCain. Thank you, Mr. Ryan. I am certainly pleased to know that the administration is in support of this bill, with amendments. I also strongly share your sentiment concerning the negotiated aspects of the water rights. As you may know, I come from a State where we have been entangled in court suits over water rights for most of this century and probably will be well into the next century. The more we can get negotiated settlements, the better off I think all parties are.

Mr. Ryan, have you discussed the amendments with the Seminole Tribe? The amendments that you have recommended, have you discussed them with the tribe?

Mr. Ryan. No, sir; I have before—earlier, we presented a statement before the House; Congressman Udall chaired that hearing. Previous to that meeting we had had some discussions with representatives of the Seminoles. Subsequent to that hearing there were some other meetings at which I was not present, but it's my belief that by and large these amendments are such as not to affront the progress that's being made by all the parties here.

Senator McCain. Well, I think it would be of great help if you could sit down with representatives of the State and the tribe and perhaps by November 19, when this committee intends to mark this bill up, if we could get a basic agreement, I think it would expedite the passage of this bill rather significantly. I will ask the representatives from the State and the tribe if they could make themselves available, as well.

Mr. Ryan. Yes, sir; we would be happy to do that.

Senator McCain. Let me say, from my reading of the proposed amendments that you have, all of them seem entirely reasonable to me—not being an expert on this issue—but they certainly seem reasonable and I hope that we can get an agreement.

I just have one more question. In your view, do you believe that this settlement is fair to the tribe?

Mr. Ryan. With these amendments I do, yes.

Senator McCain. And without the amendments you wouldn't necessarily think they were——

Mr. Ryan. Without the amendments, I think that the bill in some areas would be a little ambiguous. I think that in ambiguity there is danger.

Senator McCain. Thank you, Mr. Ryan. Is there anything you would like to add?

Mr. Ryan. No, sir; except that I am very pleased to be here supporting the bill.

Senator McCain. Thank you. It's a refreshing change. [Laughter.]

We do appreciate your support of this bill, seriously.

Mr. Jim Shore? And Mr. Steve Walker is with you, I believe?

Mr. Shore. Mr. Jerry Straus.

Senator McCain. Jerry Straus.

STATEMENT OF JIM SHORE, GENERAL COUNSEL, SEMINOLE TRIBE OF FLORIDA, ACCOMPANIED BY JERRY C. STRAUS, WASHINGTON COUNSEL, SEMINOLE TRIBE OF FLORIDA

Mr. Shore. Thank you, Mr. Chairman. My name is Jim Shore. I am the General Counsel for the Seminole Tribe of Florida, and with me is Jerry C. Straus, the tribe's Washington counsel. On behalf of Chairman James Billie I wish to submit a written statement to this committee for the record and make a brief summary of his statement, and be available to answer any questions afterward.

Senator McCain. Without objection your statement will be made a part of the record.

Mr. Shore. Thank you.

This approval of this agreement between the Seminole Tribe of Florida and the State of Florida and the South Florida Water Management District has been one of the more difficult decision processes that the tribal councils have had to deal with in recent times because this agreement asks for the tribe to enter into an agreement with the State of Florida and one of its agencies. Traditional Seminoles know the history of these kinds of agreements between a State and a tribe.

Additionally, this agreement asks the tribe to sell six sections of their land to the State of Florida for their Save Our Everglades program. Traditionally, the tribe is always against any reduction of their land base. However, the tribe believes the State of Florida, the South Florida Water Management District and the tribe have a common goal, which is to protect and preserve the environment and the limited resources in the State of Florida. Therefore, the tribe believes a negotiated settlement of the outstanding dispute with the State and defining the tribe's water rights by an agreement is the best of the alternatives available in resolving this problem, so the Seminole Tribe is in favor of this agreement and would request this committee report this bill favorably.

With that, Mr. Straus will comment on Mr. Ryan's statement and would be available to answer any questions afterwards.

[Prepared statement of Mr. Billie appears in the appendix.]

Senator McCAIN. Please proceed, Mr. Straus.

Mr. STRAUS. Mr. Chairman, I would just like to make one brief remark. We have had an opportunity to review the amendments suggested by the administration, and actually, some of them were previously made available to counsel for the State. Speaking for the Seminole Tribe, we have no objection to any of the amendments. So they should not stand in the way of early action.

Senator McCAIN. That's very good to hear, and I hope that you all will be able to meet as soon as possible. We'll get these amendments prepared by the staff, along with you, and we'll adopt them and try to get this bill marked up on November 19. I think that this committee is appreciative of the need for expeditious movement. I am also sure that the House side—Chairman Udall and his committee—gave this legislation a very careful examination, as well.

Mr. STRAUS. I might just add that we have provided committee staff with a compilation of the various amendments that have been suggested. We had a couple of minor technical ones, and there are a couple of technical ones suggested by the State.

Senator McCAIN. Good.

Mr. Shore, could I ask what method the tribe has used to advise its members of the agreement and how you have been able to receive input or recommendations from tribal members?

Mr. SHORE. At the time the litigation that is in process came more or less to a standstill and the negotiation with the State first began, an idea of settling some of the other disputes that we have plus defining water rights was something that the tribal council itself could deal with. But when it came to selling six sections of their land, the council knew that was something on which the community would have to have an input. So early in the process the tribal council directed Mr. Straus and me to deal with the communities directly. We have three Federal reservations, so I believe we had at least three different meetings on these reservations in the process of explaining what this is all about and what it involves. So it was a long, drawn-out process, but in the end, as I said, the tribal council believes that this is, at this time, the better way to go in resolving these problems.

Senator McCAIN. Mr. Shore, were the terms of the settlement agreement generally favorably received by the members of the tribe that attended these meetings that you held?

Mr. SHORE. Yes; and I believe—one thing that I can say, the money involved in this agreement is not the important thing to the tribe because of selling their six sections. The more important thing is to be able to acquire more lands that would not reduce their land base. They would like to add on. So the money is important to us, but I think the defining of the water rights and the possibility of acquiring more lands are the more important things to the tribe than the money.

Senator McCAIN. What is the total membership of your tribe?

Mr. SHORE. We are in the neighborhood of 1,700 members.

Senator McCAIN. And you have always been a Federally-recognized tribe?

Mr. SHORE. Since 1957.

Senator McCAIN. Since 1957?

Mr. SHORE. Yes.

Senator McCAIN. Isn't it true that you never signed a peace treaty?

Mr. SHORE. Correct. You may find certain documents that tend to indicate it's an agreement with the Seminole Tribe of Florida, but the signators on any agreement did not represent the tribe at that time. I think some of the methods which the Government may have used in getting these so-called representatives to sign may have been questionable, so no actual treaty between the official tribal government had ever been made with the Federal Government.

Senator McCAIN. And probably never will?

Mr. SHORE. Probably not. [Laughter.]

Senator McCAIN. Well, I want to thank you and Mr. Straus for your involvement in this issue. I hope that we can get this legislation passed expeditiously for the benefit of your tribe. Obviously also it will be of benefit to the Federal Government and the State of Florida, and I think that a lot of the work that you have done has contributed greatly to making this piece of legislation have very little controversy associated with it. So thank you for appearing before the committee today. Keep your fingers crossed and we'll try and get something done on November 19.

Mr. SHORE. Thank you.

Mr. STRAUS. Thank you.

Senator McCAIN. In closing this part of the hearing, I would seek unanimous consent to have made part of the record a letter from Mr. David Guest, the Assistant Attorney General of the State of Florida, to Chairman Inouye. The record will be kept open for 14 days for additional comments or questions.

[Letter from Mr. Guest appears in the appendix.]

Senator McCAIN. Do we have another witness?

Mr. WALKER. Yes, Mr. Chairman; Steve Walker from the South Florida Water Management District.

Senator McCAIN. I'm sorry, Steve. I apologize. I was informed that Mr. Straus was in your place, but you're obviously here for yourself. Please accept my apologies for overlooking you and please proceed with your testimony as you see fit.

STATEMENT OF STEPHEN A. WALKER, DISTRICT COUNSEL, SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Mr. WALKER. Mr. Chairman, my name is Steve Walker. I'm the District Counsel for the South Florida Water Management District, which is an agency of the State of Florida charged with the responsibility of managing the water resources of south and southeast Florida.

At the beginning of the hearing the Chairman has recognized the letter from the Office of the Attorney General of the State of Florida, and I would ask that you accept that into the record.

Senator MCCAIN. Without objection, it will be made part of the record.

Mr. WALKER. The State has suggested in that letter two minor amendments to a portion of the bill, and that will be discussed with the Department of the Interior. I'll leave it to the State to do that.

I have also submitted a statement on behalf of the South Florida Water Management District and I would like to briefly summarize that, if I could, at this point.

Senator MCCAIN. Please feel free to summarize, Mr. Walker, and your complete statement will be made a part of the record.

Mr. WALKER. The South Florida Water Management District completely supports S. 1684. The land exchanges and other factors involved in the bill will allow the District and the State and the tribe to move forward in a cooperative venture to protect, preserve and restore the fragile ecosystem of the Florida Everglades, as well as provide meaningful water resource management for the citizens of south Florida and for the Seminole Tribe of Florida.

The State and the District have a minor problem to work out relative to the title transfer to the lands within Water Conservation Area 3A. There will probably be an intermediate transfer of those lands to the District; then once the State is able to support the funding of that—the District has funded the money for those transfers; when the State comes up with their share, we will then transfer title to them in compliance with the settlement agreement and this legislation.

Much has been said about the resolution of the litigation and so forth. I will not repeat that testimony.

I'd just like to say in closing that the District is proud of its efforts as an effective problem-solver for Florida. We've worked very hard to make this settlement a reality, and the passage of this bill is really the final step on a long, hard road that the tribe, the State and the District have traveled toward resolving these disputes.

We intend to approach implementation of our responsibilities under this settlement with the same vigor with which we pursued the settlement. We feel that this is the only way that we can ensure that all those who live in Florida will reap the benefits of those agreements and compromises that have been reached into the future. We urge your speedy consideration of this very important bill.

I would be happy to answer any questions that you may have.

[Prepared statement of Mr. Walker appears in the appendix.]

Senator MCCAIN. Thank you, Mr. Walker.

I have no questions. I've read your statement in its entirety and I think it's a very fine one. Please accept, on behalf of our committee, our appreciation to the members of your board for a very fine job and, I think, a very fine degree of cooperation that has existed between yourself, the tribe, the State and the Federal Government. As I said before, we'll try to get this done for you. You certainly deserve it after all the years of work that have been put in on this effort.

Thank you, Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman.

Senator MCCAIN. I would like to have the statement of the Honorable Lawrence J. Smith be made part of the record.

[Prepared statement of Mr. Smith appears in the appendix.]

Senator MCCAIN. The record will be kept open for 14 days. Unless the staff tells me otherwise, we will close this part of the hearing.

[Whereupon, at 2:50 p.m., the committee proceeded to other business.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF SENATOR LAWTON CHILES
THE SEMINOLE INDIAN LAND CLAIMS SETTLEMENT ACT
SELECT COMMITTEE ON INDIAN AFFAIRS
NOVEMBER 5, 1987

First, I would like to thank the Chairman for his timely consideration of S. 1684, the Seminole Indian Land Claims Settlement Act of 1987. I appreciate the Chairman's cooperation and the opportunity to offer testimony in support of this bill.

I was pleased to join Senator Graham in sponsoring this bill. I know that as Florida's Governor he was instrumental in the parties coming to terms. Most importantly, were it not for the patience and hard work of the Seminole Indians, their attorneys, the South Florida Water Management District and the State, we would not be here today to consider this settlement agreement.

In light of the current budget crisis, I am pleased to report that this settlement will impose no new costs to the federal government. But if the litigation continues because Congress does not approve this legislation promptly, the United States would be obligated, under its responsibility to protect the trust resources of the Seminole tribe, to finance the Tribe's suit. This could be expensive.

Considering the months of hard work by all involved parties, I am happy to see that the Land Claims Settlement has progressed this far. As we will hear today, all the necessary preconditions to Congressional consideration of the Act have been satisfied. The Seminole Tribe, the Water Management District, both houses of the Florida legislature, Governor Martinez, the Florida Cabinet and the Bureau of Indian Affairs have given the compact their approval. The Seminole Tribe has assured me that they are satisfied with the terms of the agreement. Now all that remains is approval by Congress and the Federal District Court having jurisdiction over the pending suit.

The Seminole Indian Land Claims Settlement Act settles a number of longstanding disputes between the Seminole Indian Tribe, Florida, and the South Florida Water Management District. Specifically, the Act settles a pending lawsuit against the State regarding land claims and extinguishes other land claims never litigated dating back to 1839. The Act requires the Seminole Tribe to relinquish its rights to certain lands, some of which are critical to Florida's Save Our Everglades Restoration program. The state would transfer part of its East Big Cypress State Reservation into federal trust for the benefit of the Seminole Tribe. Also, the Seminoles will receive a settlement from the State and the South Florida Water Management District for water development so as to enable the Tribe to further develop its agricultural base.

The Act is unprecented in that it contains a water rights compact. This feature makes it unique because never in our history has there been a large-scale water rights settlement between Tribal and State authorities before litigation was filed. This compact defines the water rights of the Seminole Tribe, and all other involved parties. It guarantees the Seminole Tribe a fixed percentage of water, but binds the Tribe to abide by state law in its use. Also, the compact obligates the Water Management District to assist the Tribe in the development of its resources so that the Tribe may become economically self-sufficient. The water rights compact stands as a shining example of an alternative to costly and time-consuming litigation. It sets a precedent which hopefully others involved in similar disputes will follow.

The Act has been discribed as a "win-win" proposition. The settlement apparently benefits all parties involved--that is--the Seminole Indian Tribe, the State of Florida, and the South Florida Water Management District. Agricultural and and urban customers of the South Florida Water Management District, including residents of Miami, Hollywood and Ft. Lauderdale, also stand to benefit from congressional approval of the settlement. The settlement also enjoys the enthusiatic support of environmentalists throughout Florida who are concerned about the water conservation and restoration of the Everglades.

Mr. Chairman, once again I appreciate the opportuntiy to present my testimony. I hope the Committee can clear the bill for action by the full Senate before the session ends.

TESTIMONY OF HONORABLE TOM LEWIS
S. 1684 - Seminole Indian Land Claims Settlement Act
Select Committee on Indian Affairs
Thursday, November 5, 1987

Mr. Chairman, I appreciate this opportunity to testify on behalf of S. 1684, the Seminole Indian Land Claims Settlement Act. As the sponsor of companion legislation in the House of Representatives, and being the House Member who represents two of the three Federal Seminole Indian Reservations in Florida, I am proud to support this important measure.

This legislation is of vital importance, not only to the Seminole Indian Tribe of Florida, but also to a variety of non-Indian Floridians whose water and property rights are beneficially affected by the settlement this bill approves. Under this precedent-setting agreement, long-standing claims of the Seminole Tribe to land and water rights will be amicably settled, to the benefit of the Tribe and its members, as well as the people of Florida.

The dispute about rights to the flow of water across the state-recognized Seminole Reservation has prevented the Tribe from developing its land, and the SFWMD and the State from implementing a flood control plan in neighboring Hendry County. Under the terms of this settlement or "Compact," the Tribe has agreed to drop its lawsuits and its opposition to the flood control plan, and to preserve specified wetlands in the land area which will be placed in federal trust for the Tribe. The SFWMD will provide technical assistance to the Tribe needed in developing a surface water management system for farmlands in the Big Cypress and Brighton Reservations.

Mr. Chairman, the settlement which this bill is intended to ratify will impose no new costs on the United States. However, if litigation were to continue because the Congress does not act promptly to approve this legislation, the results could be very expensive indeed. Under its responsibility to protect the trust resources of the Seminole Indian Tribe, the United States would be obligated to financially support the Tribe's suit.

This Compact has already been approved by Florida Governor Bob Martinez and the Florida Cabinet, both houses of the State legislature, by the South Florida Water Management District, and by the Seminole Indian Tribe themselves. The Seminole Indian Land Claims Settlement Act merely expresses necessary Congressional approval of these land transactions, and as I have previously indicated, will involve no federal payments.

If not fully approved soon, this settlement could begin to unravel, costing the Tribe, the people of Florida, and the taxpayers of the United States significant amounts of money. Therefore, Mr. Chairman, I welcome this Committee's attention to S. 1684 and urge expeditious movement on this legislation. Thank you.

SENATOR GRAHAM'S TESTIMONY

ON THE

SEMINOLE INDIAN LAND CLAIMS SETTLEMENT ACT OF 1987

THURSDAY, NOVEMBER 5, 1987 WASHINGTON, D.C.

Mr. Chairman, Members of the Committee:

I am pleased to have this opportunity to discuss with you a Bill which settles a longstanding dispute involving the Seminole Tribe, the State of Florida and the Federal Government.

In September, Senator Chiles and I introduced the "Seminole Indian Land Claims Settlement Act of 1987" which will compensate the Seminoles for land taken by the federal government.

It will resolve a Seminole grievance over a critical water flowage easement controlled by the South Florida Water Management District. It will secure the continued use of that easement which is essential for the provision and regulation of the water supply for the residents of South Florida coastal cities, including Miami and Fort Lauderdale, and of large agricultural areas.

By monetary compensation and by the transferral of some lands to the United States to be held in trust for the Tribe, an 11-year dispute over water rights and land claims will be put to rest. That action will remove the cloud over many land titles in Florida, and the attendant hardship to present landowners.

Under the Act, a 9,600 acre tract of land which is now in the East Big Cypress Reservation, will be added to an existing Seminole Reservation and held as a federal reservation for the Seminole Tribe. Those lands will be subject to Florida civil and criminal law, specifically, Florida laws on alcoholic beverages, gambling and cigarette sales.

Seminole land and water rights in Florida have been disputed since before the 1839 Presidential Executive Order which attempted to resolve the claims the Seminoles had nearly 150 years ago.

Both Senator Chiles, who is an enthusiatic co-sponsor of this legislation, and I are relieved to have at last reached an accommodation agreeable to all parties.

Expeditious passage of this legislation will allow us to finally put this longstanding dispute to rest. I thank you, Mr. Chairman, and the Members of the Committee for your prompt consideration of the Seminole Indian Lands Claim Settlement Act.

STATEMENT OF FRANK A. RYAN, DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 1684, A BILL "TO SETTLE SEMINOLE INDIAN LAND CLAIMS WITHIN THE STATE OF FLORIDA, AND FOR OTHER PURPOSES."

November 5, 1987

Good afternoon, Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1684, a bill "To settle Seminole Indian land claims within the State of Florida, and for other purposes."

We would support enactment of S. 1684, if amended as recommended in this statement and set out in its attachment.

S. 1684 provides for Federal approval and implementation of a land claims settlement agreement and a water compact entered into by the Seminole Tribe of Florida with the State of Florida and the South Florida Water Management District. The bill does not call for any payment of Federal funds or any disposal of Federal assets under the agreement or compact. It does provide for the Secretary of the Interior to assume the role of trustee for certain lands that the State has maintained as an Indian reservation and for those and other lands to be surveyed.

Analysis of S. 1684

Section 1 of S. 1684 provides the short title "Seminole Indian Land Claims Settlement Act of 1987".

Section 2 (Findings And Policy) includes a brief explanation of the need for enactment of the bill including that the bill provides for the settlement of the 1978 lawsuit entitled Seminole Tribe of Indians of Florida v. State of Florida et al. which involves certain lands in Florida. This section also states that the Water Compact between the Tribe and the South Florida Water Management District (Water District) which would be approved by enactment of the bill establishes specifically defined tribal water rights in lieu of those claimed by the Tribe. Paragraph 4 of this section should be deleted in connection with an amendment to section 5(b)(4) of the bill which we recommend later in this statement.

Section 3 provides definitions for the bill.

Section 4 provides that section 5 of the Act shall not take effect until the later of 180 days after the date of enactment of this Act or when the Secretary of the Interior finds that (1) the State and Water District have paid the settlement funds to the tribe; (2) the State has enacted appropriate legislation to carry out the commitments under the Settlement Agreement including the compact between the State, the district and the Tribe; and (3) the State and the district have given the waiver specified in paragraph (5)(c) of the Settlement Agreement.

Section 5(a)(1) provides that the Congress approves the Settlement Agreement, including the Compact.

Section 5(a)(2) provides that the Secretary shall publish the findings required by section 4 and the Settlement Agreement in the Federal Register. Upon that publication all transfers, waivers, releases, relinquishments, and other commitments made by the Tribe in the Settlement Agreement with the State and Water District will be in full force and effect. The land and resource transfers made by the Tribe shall be deemed in conformity with the U. S. Constitution and applicable Federal law including the Trade and Intercourse Act of 1790 and subsequent versions thereof codified in 25 U.S.C. 177.

Section 5(b)(1) provides that all Seminole tribal aboriginal title claims in Florida "are hereby extinguished" unless specified as an excepted interest in the Settlement Agreement. All prior land or natural resource transfers by the Tribe to the State or Federal Government pursuant to treaty or statute are validated.

Section 5(b)(2) provides that any Seminole tribal claims related to the land and resources involved in that extinguishment or validation but arising after the effective date (including claims for trespass damages or use and occupancy) are also extinguished. We are recommending an amendment to ensure that the approval of the Settlement Agreement and compact by the Congress does not create any claims by the tribe against the United States or others but preserving any tribal claims arising under the Agreement or compact.

Section 5(b)(3) provides that any individual Indian claims not derived from or through the Seminole or other Indian tribe shall not be affected by this Act. Thus, any rights of the unaffiliated Seminoles in Florida as individuals are preserved although any rights they may have through the tribe are extinguished.

Section 5(b)(4) imposes a statute of limitations on any claims by individual Indians or tribes other than the Seminole Tribe of Florida relating to the extinguishments and validations under section 5(b)(1) and (2). A claimant must within 180 days after publication of the Secretary's findings "bring action against the State and the United States". The only remedy afforded in any such action is "a proportionate share" of the $16 million Seminole award for which funds were appropriated in 1976.

The $16 million award is for the benefit of the Seminoles in Florida and in Oklahoma. Because of a dispute between the Seminole Tribe of Florida and the Seminole Nation of Oklahoma over the division of the award, the Congress has not enacted the legislation needed to divide the award and authorize the use of the funds. The investment income on the award had increased the total amount now available for use and distribution to over $40 million. Since the Seminole Nation of Oklahoma is not a party to the Settlement Agreement its interest in the award should not be used. Moreover, we do not believe that the award for a Seminole claim against the United States should be used as a pool to pay claims against the State or Federal Governments. We recommend deleting section 5(b)(4)(B).

Section 5 in providing for the extinguishments and validations refers to the Seminole Tribe of Florida "or any predecessor * * * in interest". This language would seem to include any interests the Seminole Nation of Oklahoma may have remaining in Florida from before the division of the Seminoles into the Florida and Oklahoma groups. Section 5(b)(4) would provide the Seminole Nation of Oklahoma a chance to bring any claims they believe they may have if they do so within the 180 days. Although it does not appear to us that there is any remaining basis for such a claim, we believe that the Congress should consider the views of the Seminole Nation of Oklahoma since they were not a party to the Settlement Agreement. In addition, we recommend that the bill be amended to change the 180 days to one year to provide a more reasonable period for any claims to be brought.

Section 6(a) directs the Secretary to accept from the State the transfer of approximately 15 sections of land to be held in trust and as a reservation for the use and benefit of the Seminole Tribe of Florida. The land (which has been a State Reservation for the Tribe) would continue to be subject to the criminal and civil jurisdiction of the State of Florida. The amendments attached to this statement provide for the deletion of this latter language at the end of section 6(a) because the subject is dealt with in greater detail in section 6(d).

Section 6(b) requires the Secretary to conduct a cadastral survey within two years of enactment of this Act of all Seminole Reservations in Florida including all lands taken into trust as reservations pursuant to this Act. The Secretary is to publish the legal descriptions in the Federal Register within 180 days after the survey is completed. We understand that some of the land was surveyed by the Bureau of Land Management in 1975 and we do not believe that another survey of that land would be required. We are requesting an amendment to make it clear that unnecessary resurveys are not required.

In addition, we estimate that surveying the remainder of the lands would cost about $300,000 which could be accommodated by the diversion of funding from survey work on other Indian lands. However, if the Congress chooses to impose this priority on the Secretary, we are requesting an amendment to extend the period for the surveys to three years because the work can be accomplished more cost effectively over that period. The BIA anticipates there would be no additional resources required above the current budgeted level to provide services to the Tribe as the result of enactment of this settlement.

Section 6(c) requires the Secretary to take into trust for the Tribe any land acquired under a subsequent agreement with the State or Water District providing that the land may be taken in "Federal trust as a Reservation for the Tribe" and that the land would be held in trust "pursuant to the terms and conditions of the subsequent agreement." We are requesting an amendment to limit the amount of land required to be taken into trust to the amount of land that the tribe is transferring to the State under the Settlement Agreement because we understand that the purpose of the provision is to facilitate the restoration of the tribe's land base. In addition, the amendment would avoid the possibility of the imposition of an unreasonable burden on the United States such as, for example, would be the case in the transfer to the Secretary in trust of scattered tracts or land containing toxic waste materials. The amendment would also require that the land be in Florida and agricultural in nature.

Section 6(d) preserves the existing jurisdictional authority of the State over land transferred to the Secretary in trust for the tribe. We are requesting some technical and clarifying amendments to the subsection.

Section 7 provides that the Water Compact shall have the same force and effect as Federal Law. We are requesting an amendment to clarify that the provision is for purposes of the enforcement of the tribe's rights and obligations under the Compact.

Section 8 provides that any action to contest the constitutionality of this Act shall be barred unless the complaint is filed within 180 days after the date of enactment in the U. S. District Court for the Southern District of Florida. Section 8(b) provides the same Court with exclusive jurisdiction regarding any controversy arising under the Settlement Agreement, Compact, or private agreement between the Tribe and any third party under the Compact. However, the Court would have no jurisdiction to award money damages against the State, the Water District, or the Tribe.

Section 9 provides that if part or all of the Settlement Agreement is ever invalidated, the transfers, waivers, releases, or other commitments made by the State or the Water District and the Compact shall no longer be of any force or effect and the Tribe and its members shall be released of its commitments as if never enacted and the extinguishments and approvals under section 5 shall be void ab initio.

Finally, section 10 provides that the Act is effective upon enactment.

Background

The Seminole Tribe's land in Florida has been divided between State trusteeship and Federal trusteeship. Brighton, Hollywood and West Big Cypress are Federal reservations. The East Big Cypress is a state reservation which was established in 1935 in exchange for a reservation that had earlier been established in Monroe County (this reservation was initially set aside for the Seminole and Miccosukee Tribes, but was ultimately partitioned between the two Tribes, pursuant to Florida Statutes §285.061).

We support the transfer of the State Reservation lands to Federal trust and reservation status. The state trustee is the Board of Trustees of the Internal Improvement Trust Fund (TIITF), the same body which is responsible for the development of state lands. The inherent conflict of interest in such an arrangement was illustrated in 1950 when the TIITF, charged by state law "to protect the Tribe's use and benefit of the Big Cypress lands forever," conveyed a flowage easement over these lands to the Central and Southern Flood Control District (now the South Florida Water Management District) without provision for any compensation to the Tribe. The Flood Control District eventually flooded the lands within the easement.

The Tribe filed suit in 1978, claiming, alternatively, an inverse condemnation, breach of trust under state law, and attempted alienation of its property interests in violation of Federal law. The case was actively litigated through the end of 1984. In early 1985, the parties began the settlement talks which eventually led to the agreement that enactment of S. 1684 would approve.

Conveyances and Settlement of Land Claims

Enactment of S. 1684 to approve the Settlement Agreement would settle the Tribe's pending claims in Seminole Tribe of Florida, et al. (Case No. 78-6116-CIV-NCR), which involve the action of the State of Florida in granting a flowage easement over part of the Seminole State Reservation in 1950. All claims under Federal and State law against the State and the South Florida Water Management District arising from this transaction would be settled. Under the terms of the settlement, the Tribe would give up its ownership of 14,470 acres of land. These lands would be transferred to the State in fee.

The Tribe would also sell to the State the Tribe's interests in the six sections of the State Reservation in Palm Beach County not subject to the flowage easement, which the State desires to acquire for the Rotenberger Tract Everglades restoration program. The Tribe would also waive any claim for the 5,000,000-acre reservation set up under an 1839 Executive Order (the Macomb claim), which has never been filed but which has been used in settlement negotiations. The Tribe would abandon any claim it had to continued aboriginal title, or any other claim against the State, except for one claim that had been reserved from the settlement arising from an unauthorized widening of Highway 441 across the Hollywood Reservation.

For these various land claims and transactions, the Tribe would receive approximately $7,500,000. Of this figure, $500,000 is to be paid by the South Florida Water Management District in the form of in-kind services needed for water development on the West Big Cypress and/or Brighton Reservations. The Water Management District has promised and has in fact already provided assistance to the Tribe in obtaining matching Federal funds for this work. All lands of the East Big Cypress Reservation remaining in the Tribe's beneficial ownership would, after the settlement, be transferred into Federal trust. The transfer into Federal trust would involve a release by the District of any rights it may have obtained under the flowage easement to three sections of land that are not needed for the operation of its project works. The transfer would be subject to the restriction that bingo operations and tax exempt cigarette sales could not be conducted on these specific lands. State liquor laws would also continue to fully apply to these lands.

We are advised that the settlement has been approved by the Seminole Tribal Council, the Florida legislature, the Florida Governor and Cabinet and the South Florida Water Management District's Governing Board.

Seminole Water Rights Compact

As an integral part of the settlement, a Water Rights Compact among the Seminole Tribe, the State of Florida and the South Florida Water Management District has already been approved by the Seminole Tribal Council, the District's Governing Board, the Florida Governor and Cabinet and the Florida Legislature.

Problems as to both water quality and water quantity have become critical in the State of Florida and the Bureau of Indian Affairs has been assisting the Seminole Tribe in recent years in the study of its water rights problems. In 1986, the Corps of Engineers, at the request of the Bureau of Indian Affairs, completed a study of problems at the Seminole Brighton Reservation where critical water shortages have been frequent in recent years. It seemed inevitable that large scale litigation involving the nature of the Seminole Tribal water rights and their relationship to the water law of the State of Florida would result.

Under the Compact, the Tribe may operate without obtaining permits from the District and without being subject to the processes of the District. In return, the Tribe agrees to follow essential aspects of Florida surface and ground water management and to seek advance approval from the District of its water development plans and consumptive water use.

Also, under the Compact, the Seminole Tribe is given an immediate preference for the development of its ground water and, in the future, is assured a priority of the highest nature actually afforded to persons or entities allowed under Florida law with respect to any water right. Seminole water rights will differ from the usual water rights afforded to Florida citizens. One important difference is that they would be perpetual in nature and would not be subject to renewal by State authorities.

The Water District guarantees the Tribe 15% of the available surface water in the Indian Prairie Basin (Brighton Area) and a comparable percentage on the Big Cypress Reservation. An investigation of the tribal water shortages in Brighton is required of the District and must be completed by December 31, 1987. A proposal for curing tribal water shortages in that area is to be produced by the District no later than January 13,1988.

We understand that it has long been believed that upstream diversions of surface water have contributed to water shortages on the Brighton Reservation. Deterioration of the internal water system at Brighton, recently studied by the Corps of Engineers, has also contributed to the problem.

The Water Rights Compact is unique and important for several reasons. To my knowledge, it is the first serious attempt to define Indian Tribal water rights in the Eastern United States. It is also unique because it illustrates the possibility of settling a significant Indian water rights issue without resorting to litigation. To our knowledge, this is the only compact or agreement where such a settlement has been accomplished without years of litigation preceding the settlement. This is entirely consistent with the Administration's policy that the negotiated settlement of Indian water rights is the better course of action to pursue, rather than protracted litigation to resolve outstanding claims.

With respect to tribal jurisdiction for water management and its relationship to State of Florida water law, it is our understanding that the tribe would have the jurisdiction to manage its water resources, but that it has agreed to a notice procedure. Upon tribal notice of a management action, if the State or South Florida Water Management District believe the management action is not consistent with the compact, the tribe may proceed with implementation, and the State and District would have the alternative of resolving the question of tribal jurisdiction in the Federal District Court.

The Water Compact states in part "Those State laws and rules, orders, and regulations which are applicable to the Tribe under the terms of the Compact as specified hereafter are expressly incorporated into federal law, and apply to the Tribe as federal law." This provision is of critical importance to the Tribe. The Tribe, in its sovereign status, would never subject itself to State law willingly. It is our understanding that there was a great deal of reluctance on the part of many tribal members to the whole concept of harmonizing tribal operations with the State system, but the Tribe finally came to the view that it was better to do this and to formulate a cooperative arrangement with the State. Though the Tribe would have to follow many of the substantive provisions of State law, the Tribe's governmental status and special Federal protection would not be compromised.

One of the basic theories of the Compact is that the Tribe is protected because it is not subject to State administrative control. While the State has certain powers to affect the tribe's activities through the processes agreed upon, the State cannot, on its own initiative, stop tribal action, if the Tribe chooses to proceed. If a dispute arises, for any reason, the recourse of the State or the Water District is to take the Tribe to Federal

Court where the burden will be on the District or State agency, as the case may be, to show that the Tribe has violated its commitments under applicable provisions of the Compact.

It is critical that the Tribe be in the position to enforce the Compact rights as Federal rights against the State and the Water District. This can only be accomplished, if all the provisions of State law, which are made applicable to the Tribe by the Compact, have the force of Federal law for purposes of enforcing the tribe's rights and obligations. Also, by affording the terms of the Compact the status of Federal law for purposes of enforcing the tribe's rights and obligations, the Tribe could bring an action in Federal Court to compel the State or the District to implement or enforce a State law.

The Seminole Compact would not set a precedent for the water rights claims or the water-rights-related expectations of the any other tribe. The only other federally recognized tribe in Florida is the Miccosukee Tribe. Under section 8(c) of Public Law 97-399, the creation of the Federal reservation for the Miccosukee Tribe, under the Florida Indian Land Claims Settlement Act of 1982, did not confer upon the Miccosukee Tribe any Federal water rights. Given the unique nature of water law in Florida--which is the only State in the East that has fully adopted a permit system of water resource management and has abolished private Riparian rights--the Compact, which harmonizes the rights of the Seminole Tribe with that system, would have no specific application elsewhere.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

AMENDMENTS PROPOSED BY THE DEPARTMENT OF THE INTERIOR TO S. 1684, THE "SEMINOLE INDIAN LAND CLAIMS SETTLEMENT ACT OF 1987"

1. In section 2, on page 2 delete lines 17 through 23 and renumber the remaining paragraphs accordingly.

2. In section 5(b)(2):

on page 8, line 9 delete "(2)" and insert in lieu thereof "(2)(A)"; and
on page 8 insert immediately before line 19 the following new subparagraph:

> "(B) The United States shall not be liable directly or indirectly for any claim or cause of action arising from the approval of this settlement agreement, compact, or exhibits attached thereto."

3. In section 5(b)(4):

on page 9, line 1 delete "(A)";
on page 9, line 7 delete "180 days" and insert in lieu thereof "one year"; and
on page 9 delete lines 14 through 20.

4. In section 5 on page 9, immediately before line 21 insert the following new subsection:

> "(c) Neither subsection (a) of this section, nor section 7 of this Act (1) enacts present or future laws of the State as Federal law, (2) grants consent to any future changes in the Settlement Agreement or compact that could impose any obligation or liability on the United States, or (3) commits the United States to finance any project or activity not otherwise authorized by Federal law."

5. In section 6(a) on page 10, line 4, insert after the words "Range 35 east" the words ",as monumented by the General Land Office and depicted on plat of survey approved January 14, 1941".

In section 6(a) on page 10, delete lines 21 through 25.

6. In section 6(b) on page 11, on line 1, change "2-year" to "3-year", on line 3, after the words "survey of," add the words "those portions of", and on line 4, after "Florida", add the words "not previously surveyed by the Department of the Interior,".

7. In section 6(c) on page 11, line 17 insert before the period:

> "unless (1) the total amount of land previously taken in trust under this subsection exceeds the amount of land transferred to the State and district by the tribe under the Settlement Agreement, (2) the Secretary determines in writing that either the size, location, or condition of the land, or the terms and conditions would place an unreasonable burden on the United States as trustee, (3) the land is not in Florida, or (4) the land is not agricultural in nature".

8. In section 6(d)(1) on page 11, lines 18 and 19 delete "conveyance of any lands by the State to" and insert in lieu thereof "acquisition of any land under subsections (a) or (c) of this section by" and on lines 24 and 25 delete "State shall retrocede such civil or criminal jurisdiction in whole or part" and insert in lieu thereof "the United States accepts a retrocession by the State of such civil or criminal jurisdiction in whole or part under section 403 of the Act of April 11, 1968 (82 Stat. 79; 25 U.S.C. 1323)".

9. In section 7 on page 12, line 26 insert immediately before the period: "for purposes of enforcement of the rights and obligations of the tribe".

Prepared Statement of James Billie, Chairman
Seminole Tribe of Florida to the
Select Committee on Indian Affairs
United States Senate
November 5, 1987

Mr. Chairman, my name is James Billie and I am the Chairman of the Seminole Tribe of Florida. On behalf of the Seminole Tribe, I greatly appreciate the opportunity to present the views of the Tribe on S. 1684, the Seminole Indian Land Claims Settlement Act of 1987.

This bill will give necessary federal approval to a comprehensive settlement entered into by the Seminole Tribe of Florida, the South Florida Water Management District and the State of Florida to resolve a number of long-standing land claims of the Tribe. It also provides for clarification and recognition of the Tribe's water rights in a Water Rights Compact that substantially conforms those rights with the water laws of the State of Florida. The bill also approves the sale by the Tribe to the State of six sections of state reservation land in Palm Beach County, Florida, an area in near wilderness condition, containing many substantial wet lands. The State needs this land for restoration of the Everglades.

I would like to turn first to the sale of the six sections to the State for approximately $2,500,000. Our Tribe was very reluctant to sell these lands. The history of our Tribe is one of land deprivation. We began by owning virtually all of the State of Florida. Most of our land disappeared under treaties with the United States in the early 1800's signed by certain Indians who had no authority to sell our land. After a state reservation was created for us, we were effectively ousted from most of it because the land was needed for water resource management by the State. It seems irunic that to settle a claim based upon that unlawful deprivation we had to agree to surrender still more land. We now are left with a few small pockets of land on which our people subsist.

Despite our reluctance to part with any more land, we agreed to do so because of the solemn assurance given us by the State that the lands sold by us would never be used for any private gain, but rather would be used to enhance the ecology of the area including our neighboring Big Cypress Reservation, and benefit all the citizens of the State of Florida as well. We are willing to sacrifice these lands for the greater good of all in the hope that it will help alleviate the mistrust and conflict that has too long existed between our Tribe and the State and some of its people.

We are very pleased that the settlement package contains a Water Rights Compact--the product of almost a year of negotiations between the State, the South Florida Water Management District, concerned private landownwers and representatives of the Seminole Tribe. Under this Compact, the Tribe will waive its sovereign immunity in Federal Court and will subject itself to compliance with substantive provisions of state water law, although the Tribe will get certain preferences and privileges that are appropriate and necessary given the overall circumstances. Under the Compact, the Tribe will not be subject to the administrative control of the State or the

District but will deal with the State on a government-to-government basis, with the Federal District Court as the arbiter of any disputes that cannot be resolved between the parties. The Tribe has pledged to enact its own water code and enforce applicable tribal and federal law on the Seminole Reservations.

The Water Rights Compact, we believe, is a viable alternative to years of litigation that would be required to try to vindicate our water rights. We are very hopeful that under the Compact we can proceed to the real business of developing our reservations using the water resources we have without wasting our energies and resources in jurisdictional battles that benefit no one.

Finally, the settlement resolves our remaining land claims in Florida. One of these claims involves the 1950 decision of the State to authorize flooding most of the land of our East Big Cypress State Reservation--an action that deprived us of almost all benefit from the land. We filed a suit to vindicate this claim, but we know that resolution of that suit is many years away and we believe the time has come to put this matter behind us and, if possible, move forward in a cooperative way with the various State entities involved. It is a significant and hopeful sign that, of the $5 million that is being paid to us for the settlement of this claim, half a million is in the form of services to be furnished by the South Florida Water Management District using its unmatched expertise and skill to assist us in water development necessary for our reservations.

In recent years many conflicts have occurred between the Seminole Tribe and various interests in Florida, including the State Government itself. We hope this settlement presented to Congress for approval truly will signal the beginning of a better relationship that will allow us and our neighbors to live in peace while we proceed to develop our reservations. We know that we must develop our lands and use their resources to make them economically and socially viable homelands for our people.

It is too soon to tell whether the new relationship with the State and the Water District called for by this settlement will in fact materialize. The beginnings have been good, but centuries of mistrust and difficulty cannot be erased overnight. We are prepared to do all that is necessary to protect our rights. But we are also prepared to pursue a course of conciliation and cooperation with hope and present expectation that it will produce a greater good for all.

Mr. Chairman, on behalf of the Seminole Tribe of Florida, I respectfully request that your Committee favorably report S. 1684 and that Congress pass this vitally needed legislation without delay. Thank you.

STATEMENT OF STEPHEN A. WALKER
DISTRICT COUNSEL
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
IN FAVOR OF S 1684
DELIVERED ON NOVEMBER 5, 1987

Introduction

My name is Stephen A. Walker, I am District Counsel for the South Florida Water Management District. My purpose for appearing before you today is to express the District's support for S. 1684.

The District and its predecessors have long been involved with the Seminole Tribe of Florida, and with the United States Government. The relationships between the District, the Tribe and Federal Government have not always been harmonious in the past. Our goals and objectives have conflicted at times, and we had no effective means to communicate and resolve these conflicts. The District feels that the Settlement Agreement and Water Rights Compact which you are considering under this bill not only resolve longstanding disputes between the State, the District and the Tribe, but also provide a meaningful process for resolving disputes which arise in the future.

Historical Perspective

In 1949, the State of Florida and the United States, through the Army Corps of Engineers, entered into a partnership to provide for the design, construction, operation and maintenance of a Congressionally authorized project known as the Central and Southern Florida Project for Flood Control and Other Purposes. House Document 643. The District's predecessor, the Central and Southern Florida Flood Control District, was created by the Florida State Legislature to fulfill the conditions of local cooperation set forth in House Document 643. Chapter 25270, Laws of Florida (1949). As local sponsor the District was required to provide all lands, easements and rights-of-way necessary for the successful prosecution of the comprehensive project.

One of the key accomplishments of this federal-state partnership was the creation of three inter-connected water conservation areas about 1500 square miles in size. These conservation areas serve a number of purposes including, flood protection for major urban and agricultural areas, water conservation, water supply for east coast communities, salt water intrusion prevention and fish and wildlife protection in the Everglades. Today, these Water Conservation Areas represent virtually the entire freshwater portion of the Everglades ecosystem.

Unfortunately among the lands which were necessary to construct the conservation area system were lands which had been set aside by the State of Florida as the State Indian Reservation in the mid 1930's. Section 285.06, Florida Statutes. The State Indian Reservation, consisting of over 100 thousand acres, was held in trust for the Tribe by the State Board of Institutions, presently the Trustees of the Internal Improvement Trust Fund. In 1950, the State Board of Institutions granted to the District the right to flow and store water over a good portion of the State indian Reservation, for the purpose of constructing Water Conservation Area 3.

Ultimately, Water Conservation Area 3 was constructed in the 50's and 60's with approximately one-half of the State Indian Reservation located within the final boundaries. That portion of the State Reservation has functioned as as integral part of Water Conservation Area 3A since its completion in the mid 60's, and remains a vital component of the fresh water everglades ecosystem.

In 1978, the Seminole Tribe of Florida sued the District and the State of Florida claiming that the transfer of flowage easement from the State to the District was improper and in violation of federal law. The District, the State and the Tribe have been involved with litigation of this law suit since that date.

Early in 1986, the State, the District and the Tribe initiated negotiations to attempt to address the issues of the law suit along with a number of other resource management concerns and land disputes in an effort to reach settlement outside of the courtroom. In September of 1986, the State, the Tribe and the District reached a conceptual settlement agreement which upon final adoption, will resolve most of the outstanding resource issues between the State, the Tribe and the District. Further, through the Water Rights Compact and associated documents, the parties have attempted to provide some certainty in resolving water resource disputes in the future in a manner which harmonizes with Florida's water rights system but also protects Tribal interests.

Summary

In summary, the South Florida Water Management District supports S 1684 for the following reasons:

1. The land exchange as contemplated in the Settlement Agreement will enable the District to continue to properly manage the Everglades ecosystem within Water Conservation Area 3A, without conflicting with Tribal objectives.
2. The proposed settlement will enable the District and the State to achieve other environmental protection and restoration goals through the acquisition of Tribal lands needed to restore historic flows to an area known as the Rotenberger Tract within the Everglades Agricultural Area.
3. The settlement enables the District to mitigate flood damages in Hendry County which allegedly resulted from the construction of the original federal project.
4. Through the Water Rights Compact and the Manual this legislation sets in place a comprehensive system which enables the Tribe, the State, the District and non-tribal private land owners to resolve water resource issues in a systematic and balanced fashion.

The Governing Board of the South Florida Water Management District has approved all aspects of the Settlement Agreement. The necessary monies have been escrowed by the District. The Florida State Legislature has enacted the necessary law to effect this settlement. The District and the Tribe have begun preparations for the implementation of the Water Rights Compact and Manual in contemplation of final passage of this necessary federal legislation. This legislation represents the final step to resolving disputes which have been litigated for years. We urge the final passage of this bill so that the District, the State and the Tribe can continue along the cooperative course that has been set.

STATEMENT OF THE HONORABLE LAWRENCE J. SMITH
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
NOVEMBER 5, 1987

S. 1684

Mr. Chairman, thank you for the opportunity to testify before the Senate Select Committee on Indian Affairs to support the landmark Seminole Indian Land Claims Settlement Act of 1987, S. 1684. Less than a month ago, I testified before the House Committee on Interior and Insular Affairs in support of H.R. 3290, the companion bill to S. 1684, introduced in the House. It is indeed a pleasure to be here again with my colleague Congressman Lewis and to join Senators Graham and Chiles in this worthwhile settlement.

My district in Hollywood, Florida, represents one of the three Federal Seminole Indian Reservations in the State of Florida included in this settlement. While satisfying the long and short-term ambitions of the Seminole Tribe, this settlement simultaneously will benefit the non-Indian residents in my district. Long-standing land and water claims previously clouded by title disputes between the State of Florida and the Seminole Tribe finally will be resolved. The South Florida Water Management District will have authorship to water supply benefitting the cities and residents of Miami, Hollywood, and Ft. Lauderdale, Florida.

Realizing that this piece of legislation has virtually no opposition, I plan to keep my testimony short and to the point.

I would simply like to lay out two key points to the settlement which will have a direct impact on my constituents.

1) With the withdrawal of a 1978 lawsuit, land claims and titles, even those not included directly in the lawsuit, will be more clearly defined. This opens the way for the South Florida Water Management District to obtain additional lands and easements within the Water Conservation Areas. These easement rights will provide and regulate a water supply for the residents of South Florida.

2) Tribal aboriginal possession rights will finally be extinguished. This will result in additional lands and easements in the Water Conservation Areas also improving the water supply for South Florida residents.

Both the lawsuit and aboriginal possession rights were major obstacles for contemporary South Florida. As one of the fastest growing states in the nation, these obstacles hindered South Florida from keeping pace with the growth rate. I would like to emphasize my appreciation to the Seminoles for their acquiescence to this settlement.

This settlement between the State of Florida and the Seminole Indians has received unanimous approval from Florida's Governor, the Cabinet of Florida, both Houses of the State Legislature, the South Florida Water Management District, and the Seminole Indian Tribe themselves. In addition, the House bill has garnered 13 cosponsors to H.R. 3290. This wide-spread approval underscores the conciliatory resolution of the Seminole Indian Land Claims Settlement Act of 1987.

The ball has successfully passed from the Seminole Tribe to the State of Florida and is now in our court. It is up to Congress to complete this tripartite agreement and to facilitate the final touches to this age old story. As long as we act expeditiously, no costs will be incurred by the United States. I urge both the House and the Senate to move quickly on this piece of legislation to ensure timely implementation of all provisions included in this settlement.

The benefits from the Seminole Indian Land Claims Settlement Act of 1987 for all parties are obvious. With the consent of Congress, the Seminole Tribe and the State of Florida will be in a position to close the books on this historic and contentious dispute. When a settlement between two or more parties can be reached without opposition, the settlement is said to be a success. I believe the Seminole Indian Land Claims Settlement Act of 1987 defines success.

OFFICE OF THE ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

November 4, 1987

Honorable Daniel K. Inouye
Chairman, Senate Select Committee
on Indian Affairs
SH-838 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the State of Florida on S.1684, the proposed Seminole Indian Claims Settlement Act of 1987. I regret that prior unavoidable commitments have prevented me from appearing in person to present the views of the State on this vital legislation.

The State of Florida fully endorses the settlement and implementing legislation set out in S.1684 before this Committee for its consideration. The settlement is in the best interest of the people of the State of Florida and of the United States because it resolves long-simmering land disputes reaching back a full generation and more.

The essential provisions of this bill implement the complex Settlement Agreement reached after several years of intense negotiations. At the conclusion of those negotiations, a comprehensive Agreement was reached that a) laid to rest tribal land claims in the State Seminole Reservation in Broward and Palm Beach Counties; b) resolved any and all pre-existing claims to any part of the State by the Seminole Tribe and any of its predecessors, other than certain specified claims; and c) integrated federal Indian water law with Florida water law and regulations.

The Settlement Agreement has been adopted by the Florida Governor and Cabinet, and the Florida Legislature has adopted implementing legislation which has been signed into law.

AN AFFIRMATIVE ACTION/EQUAL OPPORTUNITY EMPLOYER

Implementation of the settlement terms will require a substantial number of complex transactions to be completed after this legislation is enacted. The time available for these transactions is limited, and for that reason I urge your timely consideration and passage of this bill.

We have two minor clarifying amendments to suggest. First, Section 6 (d) (1) of the bill provides that Florida law relating to alcoholic beverages, gambling and sale of cigarettes will continue to apply within the fifteen sections of the Seminole State Reservation that are being transferred to federal trust status. As presently drafted, the section is incomplete in referring only to certain chapter references in Florida law under these general subjects when the intention of the parties was to have all Florida law on these subjects continue to apply. We have suggested that the section be amended to delete all the parenthetical references to Florida Law.

In addition, the last sentence in this subsection, lines 6-9, p. 12, should be clarifed by the addition of the following language. After the word "State" on line 6:

"xxx, with respect to the transferred lands,"

Yours sincerely,

David Guest

David A. Guest
Assistant Attorney General
State of Florida

STATE OF FLORIDA
Office of the Governor
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

BOB MARTINEZ
GOVERNOR

November 4, 1987

Honorable Daniel K. Inouye, Chairman
Select Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman,

I am writing to encourage prompt and favorable action by the Senate on the Seminole Indian Land Claims Settlement Act (S. 1684). This legislation, sponsored by both Florida Senators, is needed to ratify recent agreements between the Seminole Tribe and the State of Florida regarding long-standing tribal land and water rights claims.

This legislation is of vital importance not only to the Seminole Tribe but also to non-Indian Floridians whose water and property rights would be beneficially affected by passage of this legislation. The agreements which this legislation would ratify have been approved by myself and the Florida Cabinet, the State Legislature, the South Florida Water Management District and the Seminole Tribal Council. I am advised that passage of this legislation would pose no costs to the federal government.

I thank you for your expeditious and favorable consideration of this important pending measure.

Sincerely,

Bob Martinez
Governor

cc: Senator Lawton Chiles
Senator Bob Graham
Congressman Tom Lewis

SETTLEMENT AGREEMENT BETWEEN THE SEMINOLE TRIBE OF INDIANS AND THE STATE OF FLORIDA

OCTOBER 29, 1987

AND THE

WATER RIGHTS COMPACT AMONG THE SEMINOLE TRIBE OF FLORIDA, THE STATE OF FLORIDA AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 78-6116-CIV-Norman C. Roettger, Jr.

SEMINOLE TRIBE OF INDIANS OF FLORIDA,)
Plaintiff,)
vs.)
STATE OF FLORIDA, et al.,)
Defendants.)

RECEIVED
JUL 31 1987
Executive Director's Office

SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED between the parties that the above-entitled case shall be settled in accordance with the terms of this Settlement Agreement (hereafter referred to as the "Agreement") and upon its approval by the Court. For the purpose of this Agreement, the parties shall be named and defined as follows:

Plaintiff, the Seminole Tribe of Indians of Florida (hereafter referred to as the "Tribe") is recognized by the State of Florida, pursuant to Chapter 285, Florida Statutes, and is an Indian tribe recognized by the United States and organized under the Indian Reorganization Act of 1934, 25 U.S.C. § 476, with a constitution and bylaws approved by the Secretary of the Interior pursuant to that Act. The Tribe approves this Agreement through its duly recognized and authorized Tribal

Council, and its approval of this Agreement will bind the Tribe and any predecessor or successor in interest and all members thereof.

The State of Florida (hereafter referred to as the "State") approves this Agreement through the Governor and Cabinet as the Board of Trustees of the Internal Improvement Trust Fund and as head of the Department of Natural Resources.

The South Florida Water Management District (hereafter referred to as the "District") approves this Agreement through action by its Governing Board.

The term "lands or natural resources," as used in this Agreement, shall mean any real property or natural resources, or any interest in or right involving any real property or natural resource, including but not limited to minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

WITNESSETH:

WHEREAS, the parties recognize that a settlement of this litigation could not have been reached unless the Agreement included an extinguishment of any and all outstanding or potential claims the Tribe might have against the State, with the exception of the right-of-way claim involving Highway 441 across the Seminole Hollywood (Dania) Reservation, which may have arisen at anytime prior to the effective date of this Agreement; and

WHEREAS, the parties further recognize that implementation of this settlement will require action by the Congress of the United States and the Legislature of the State; and

WHEREAS, it is the intent of this Agreement to resolve all outstanding disputes and differences between the State, the District and the Tribe, and, in particular, to extinguish all claims presently in existence or arising out of any previous actions, inactions, or duties of the State or the District, with the exception of the Highway 441 claim mentioned above, so that the future relations between the State, its citizens, the District and the Tribe will be one of harmony, cooperation, friendship and peace; and

WHEREAS, the parties further recognize that if, for any reason, the Agreement fails to become final and binding, the Tribe shall have the right to reassert its land claims, to renew its objection to the Modified Hendry County Plan, to again enjoy full use and possession of the approximately six sections of Seminole State Reservation land north of the southern boundary of the L-4 works and the approximately 14,720 acres within Conservation Area 3A, and further that the State and the District shall retain all their defenses in the lawsuit Seminole Tribe of Indians of Florida v. State of Florida, et al., described herein below.

NOW THEREFORE, THE SEMINOLE TRIBE, THE STATE OF FLORIDA, AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT STIPULATE AND AGREE AS FOLLOWS:

1. The parties agree that upon the effective date of this Agreement, the lawsuit filed in 1978 by the Tribe, styled Seminole Tribe of Indians of Florida v. State of Florida, et al., Case No. 78-6116-CIV.-NCR, shall be dismissed with prejudice to the Plaintiff upon the joint motion of the parties hereto. No appeal or review is to be sought by any of the parties.

2. Effective Date. This Agreement shall not become final and shall be without any binding force or effect until:

a. The Tribe and the District have executed the Escrow Agreement attached hereto as Exhibit A in order to place $4,500,000 in funds into escrow.

b. The following two events have occurred:

(1) The Tribe has executed the sales agreement attached hereto as Exhibit B, offering to sell to the State all of its state reservation lands north of the south boundary of the L-4 works (approximately six sections). The sale price shall be either two million dollars ($2,000,000); or, if these lands are determined to contain more than 3,840 acres, the price shall be the greater of two million dollars ($2,000,000) or the average of the State's land appraisal price computed on a per acre basis multiplied by the number of acres in the approximate six sections described hereinbelow at paragraph 4(d); and

(2) The State has accepted the offer pursuant to the terms set out in the sales agreement.

c. The United States Congress enacts appropriate legislation, which: (1) approves the conveyances to be made or recognized by the Tribe pursuant to this Settlement Agreement; (2) provides for the extinguishment of the claims of the Tribe to lands or natural resources in Florida, as specified in this Agreement; (3) approves the water rights compact between the Tribe, the State and the District with respect to Seminole tribal water rights, surface water management and related developmental and environmental considerations to be attached hereto as Exhibit C; and (4) directs the transfer to the United States in trust for the Tribe as an Indian Reservation those portions of the Seminole Reservation established under the provisions of Chapter 285, Florida Statutes, remaining in the Tribe's beneficial ownership after implementation of this Agreement. A draft of this proposed federal legislation which reflects the intentions of the parties is to be attached hereto as Exhibit D. It is understood that the provisions of the draft bill, reflecting the regulatory concerns of the State and the District, shall be part of any transfer of Seminole tribal lands into federal trust, unless otherwise agreed by the parties.

d. The State enacts appropriate legislation providing for the approval and implementation of this Agreement. A draft of this proposed state legislation, which reflects the intentions of the parties, is attached hereto as Exhibit E.

e. The Tribe, the District and the State enter into a Water Rights Compact (Exhibit C) which: (1) commits the Tribe to follow the essential principles of the state water rights system as presently codified in Chapter 373, Florida Statutes and the rules of the District; (2) creates alternative water rights in the Tribe as described in said Water Rights Compact, replacing the federal water rights presently asserted by the Tribe; (3) provides a mechanism for resolving conflicts between the Tribe, the State and other water users without litigation; (4) allows the Tribe to engage in reasonable development of its federal reservations and avoids penalizing the Tribe for not heretofore participating in the State's permit system codified in Chapter 373, Florida Statutes; and (5) provides essential protection for endangered wetlands within reservation boundaries.

This Agreement shall become effective as of the signing of the Agreement by the last of the parties to execute upon the effective date of the above-described federal legislation, the effective date of the above-described state legislation, the effective date of the above-described Water Rights Compact or the date of the approval of this Agreement and dismissal of the lawsuit described in paragraph 1 by the Court, whichever last occurs.

3. Cooperation of Parties. The parties agree to cooperate fully in requesting and supporting passage by the United States Congress and the Florida Legislature of the statutes described in paragraph 2, above.

The parties also agree that further proceedings in this lawsuit shall be stayed while the settlement is pending, provided, however, that this stay shall terminate on December 31, 1987, or earlier if the Court determines that favorable action by either Congress or the Legislature within a reasonable time does not seem likely.

4. Commitments of the Tribe. The Tribe agrees:

a. To the extinguishment of any right, title, interest, or claim the Tribe may now possess in any public or private lands or natural resources in Florida, other than hunting, fishing, trapping and frogging rights conferred by state law, and certain "excepted interests" consisting of:

(1) the Seminole West Big Cypress, Brighton and Hollywood (Dania) Federal Reservations, the lands of which are held in trust for the Tribe by the United States, as recognized and described in the records of the Bureau of Indian Affairs, United States Department of the Interior. It is understood that there are minor problems as to the exact status of title of certain tribal lands within the aforementioned Seminole Federal Reservations. Nothing in this Agreement is intended to alter the status of title of any lands within or adjacent to said reservations; (2) all lands purchased by or donated to the Tribe which are held in fee by the Tribe or a corporation wholly owned by the Tribe or in trust by the United States for the benefit of the Tribe; (3) those portions of the state reservation

established under the provisions of Chapter 285, Florida Statutes, which are to be transferred to the United States in trust for the Tribe as an Indian Reservation pursuant to this Agreement; (4) rights recognized in the Tribe in the Everglades National Park pursuant to 16 U.S.C. § 410(b), and in the Big Cypress National Preserve pursuant to 16 U.S.C. §§ 698(j)(k) and in the Big Cypress area pursuant to Section 380.055 Florida Statutes; and (5) the non-exclusive right of the Tribe to hunt, trap, fish and frog in those portions of the Seminole State Reservation being transferred to the State under subsection e of this paragraph. The Tribe also agrees to the extinguishment of any and all claims which the Tribe may have other than the foregoing "excepted interests" involving lands or natural resources in the State arising at any time prior to the effective date of this Agreement; provided, however, that nothing in this Agreement or otherwise shall be construed as extinguishing any right, title, interest, or claim to lands or natural resources in the State based on use and occupancy or acquired under federal or state law by any individual Indian which is not derived from, or through the Tribe, its predecessor or predecessors in interest, or some other American Indian Tribe. Further, that nothing herein shall be construed to limit the right of the Tribe to convey interests in any of the excepted lands listed in this subsection to tribal members. The rights, titles, interests and claims outside the "excepted interests" which are being extinguished or waived by the Tribe; include, but are not limited to:

(i) any and all claims the Tribe might have to any public or private lands or natural resources in Florida which are based upon claims of aboriginal title;

(ii) any and all other claims the Tribe might have to any public or private lands or natural resources in Florida; such as claims or rights based on executive order or recognized title, including but not limited to: (a) any claims the Tribe might have to all or any part of the approximately five million (5,000,000) acres of lands allegedly set aside in Florida for use and benefit of the Seminole Indian Nation, including the Tribe, during the period 1839-1845, or at any other date, by Executive Order of the United States Government, commonly known as the "Macomb" Reservation Area; (b) any claim based upon the grant and withdrawal of title to the State Indian Reservation in Monroe County, specifically returned to the State by Section 285.06, Florida Statutes; and (c) any claim based upon the alleged grant of a license to Seminole Indians residing in Florida by the Board of Commissioners of State Institutions on April 5, 1960;

b. To the extinguishment of any and all other claims, without regard to the "excepted interests" specified above in paragraph 4a, related to the following matters:

(1) any and all claims arising out of any alleged breach of fiduciary relationship between the Tribe and the State, acting in a capacity as trustee for the Tribe, arising out of any actions or inactions by the State prior to the date this Agreement is executed by the parties;

(2) any and all claims against the State, the District or its predecessor, the Central and South Florida Flood Control District, for trespass damages or use and occupancy of any lands or natural resources in the State occurring prior to the effective date of this Agreement with the exception of the Highway 441 right-of-way claim mentioned above;

(3) any and all other claims against the State and the District, or its predecessor, the Central and South Florida Flood Control District, arising out of any actions or inactions by the State or the District in regulating the use, flow, management, or storage of water, including the construction of canals and levees, at any time prior to the effective date of this Agreement;

(4) any and all other claims by the Tribe against the State and the District related to any of the matters listed in this paragraph 4b and in paragraphs 4a(1) and (2) above, or arising out of any actions or inactions whatsoever by the State, or the District, including but not limited to real property, tort, tax, contract, or constitutional claims prior to the date this Agreement is executed by the parties with the exception of the Highway 441 right-of-way claim mentioned above.

c. to withdraw its pending request for a public hearing by the Corps of Engineers on the Modified Hendry County Plan and cease all opposition to any approval required thereof, including but not limited to approval by the Corps of Engineers.

d. take necessary steps for conveyance to the State of the Tribe's lands in Palm Beach and Broward Counties, north of the south boundary of the L-4 works. The State shall convey an easement to the District for maintenance of its presently constructed project works in Sections 7, 8 and 9, Township 48 South, Range 35 East, Broward County, Florida. The State shall also convey an easement to the Tribe giving the Tribe full rights of access to the lands the Tribe is retaining from the East Big Cypress Reservation and for access to the lands in Conservation Area 3A, which are being transferred to the State but where the Tribe has reserved hunting, fishing, trapping and frogging rights.

e. to take necessary steps to transfer to the State full fee title in the approximately 14,720 acres of that portion of the state reservation east of the western boundary of the L-28 works and south of the southern boundary of the L-4 works, with the Tribe to retain non-exclusive rights to hunt, fish, trap and frog in said area. The State, acting by and through the Trustees of the Internal Improvement Trust Fund, upon approval by Congress of transfer of lands from the Tribe, shall convey an easement (hereinafter "the flowage easement") to the District for the flowage and storage of water and all rights necessary for the conduct of the federally authorized project for central and south Florida and to fulfill the statutory obligations of the District pursuant to the laws and rules of the State as they presently exist or as they may exist in the future. A copy of the transfer documents (deeds) are to be attached hereto as Exhibit F.

5. Commitments of the State and the District. The State and the District agree:

a. Subject to prior compliance with the provisions of Chapter 253, Florida Statutes, to pay the Tribe the sum of six million five hundred thousand dollars ($6,500,000) and provide five hundred thousand dollars ($500,000) in services by the District for water project design and construction, as requested by the Tribe. The District promises to use its best efforts to obtain matching federal funds for this project.

b. That the amount of six million five hundred thousand dollars ($6,500,000), to be paid to the Tribe by the State and the District, shall be paid as follows:

(1) Subject to prior compliance with Chapter 253, Florida Statutes, the State shall, for the purchase of the approximately six sections of lands north of the south boundary of the L-4 works in Palm Beach and Broward Counties, pay the Tribe either two million dollars ($2,000,000) or, if the lands

constitute more than 3,840 acres, the greater of two million dollars ($2,000,000) or the average of the State's land appraisal price computed on a per acre basis multiplied by the number of acres in the approximate six sections.

(2) The land consisting of 14,720 acres lying within Water Conservation Area 3 shall be transferred to the State in fee for the sum of four million five hundred thousand dollars ($4,500,000) with one million dollars ($1,000,000) being attributable to the flowage easement and three million five hundred thousand dollars ($3,500,000) attributable to the fee title subject to the flowage easement.

(a) The one million dollars ($1,000,000) for the flowage easement shall be paid by the State and the District with each contributing one-half of the amount, or $500,000 each, provided that the District shall pay the entire sum initially and shall be reimbursed by the State.

(b) The fee simple title (subject to the flowage easement) in that portion of the Seminole Reservation within Water Conservation Area 3, consisting of approximately 14,720 acres will be transferred to the State Trustees of the Internal Improvement Trust Fund (TIITF) for the sum of three million five hundred thousand dollars ($3,500,000). The State shall, immediately upon such transfer, convey a perpetual easement to the District, which shall include sufficient rights for the District to construct, operate and maintain the federally authorized project and fulfill its obligations pursuant to Chapter 373, Florida Statutes, and which shall be sufficient to prevent and restrict any and all encroachment or uses of the area which may be in conflict with the maintenance of the area as a water conservation area. This amount will be paid by the State and the District with each contributing one-half the amount, or one million seven hundred fifty thousand dollars ($1,750,000) each; provided, however, that (i) initially the District shall provide the entire sum; (ii) the District shall be reimbursed by the State in the sum of one-half of the actual appraised value of the remaining fee simple interest in the event that the required appraisals do not support the intended contribution of one million seven hundred fifty thousand dollars ($1,750,000). The State shall use its best efforts to place the State's share of this acquisition on the CARL fund list in order to complete the acquisition as soon as possible; and (iii) if the State Department of Natural Resources (DNR) cannot predict the listing and acquisition of this interest prior to the legislative session of 1988, the DNR and the Attorney General's Office (AGO) will request the funds from the Florida Legislature. The amount sought will be the lesser of one-half of the appraised value or one million seven hundred and fifty thousand dollars ($1,750,000).

(c) The District shall provide water management services in aid of the development of Seminole Indian lands on the remaining reservation west of Levee 28, including West Big

Cypress and/or at the Brighton Reservation in the value of no less than five hundred thousand dollars ($500,000). This amount shall be estimated by the District, with the concurrence of the Tribe, by evaluating the actual cost of the work to be done. The District will work with the Tribe and the Bureau of Indian Affairs in an effort to procure matching funds from the federal government of a nature and from sources to be determined. The parties to this Agreement agree to use best efforts to resolve any dispute arising with respect to implementation of this subsection. Disputes under this subsection which cannot be resolved by informal means will be submitted to compulsory arbitration, with a panel of five arbitrators. The Tribe shall choose one arbitrator, the State shall choose one arbitrator, the District shall choose one arbitrator, and the fourth and fifth arbitrators shall be chosen according to the rules of the American Arbitration Association.

c. To waive any and all claims for offsets, including but not limited to tort or contract claims, which were or could have been asserted against the Tribe by the District, or by the Trustees of the Internal Improvement Trust Fund or any other agency of the State prior to the date this Agreement is executed by the parties.

d. To release any and all interest in the three sections of land located in the state reservation in Broward County and subject to the provisions of the August 8, 1950

Dedication Deed from the Board of Commissioners of State Institutions to the Central and South Florida Flood Control District but not needed for conservation purposes, said lands described as Sections 7, 8 and 9, Township 48 South, Range 35 East, Broward County, Florida.

e. The Trustees of the Internal Improvement Trust Fund shall execute a dedication deed valid under Chapter 285, Florida Statutes, conveying in its entirety the State's interest in the approximately fifteen sections of the state reservation west of the western boundary of the L-28 works and south of the southern boundary of the L-4 works, said lands being situate in Township 48 south, Range 35 east, lying and being in Broward County, Florida. Said conveyance shall be to the United States in trust, and as a Reservation, for the Tribe and shall be subject to the restrictions applicable thereto found in the federal legislation (Exhibit D) the State Legislation which authorizes the Compact (Exhibit E) as well as Fla. Stat. Ann. Section 285.16.

6. The State and the District agree to use their best efforts to obtain suitable land to be made available to the Tribe which is equal in value to some or all of the compensation to be paid to the Tribe under paragraph 5 hereof. It is understood that if such land cannot be found, then the 6.5 million dollar fund provided in paragraph 5 hereof, shall be earmarked for the purchase of land, if possible, by the Tribe.

It is understood that the Tribe will not exercise the option specified herein unless there is a subsequent agreement between the State and the Tribe that said lands shall be conveyed by the State to the United States in trust for the Tribe as an Indian Reservation pursuant to the terms embodied in the federal legislation, Exhibit D. If the Tribe exercises the option to accept compensation in the form of land, the monetary payment to the Tribe shall be reduced by the appraised value of the lands actually transferred in trust to the United States for the benefit of the Tribe.

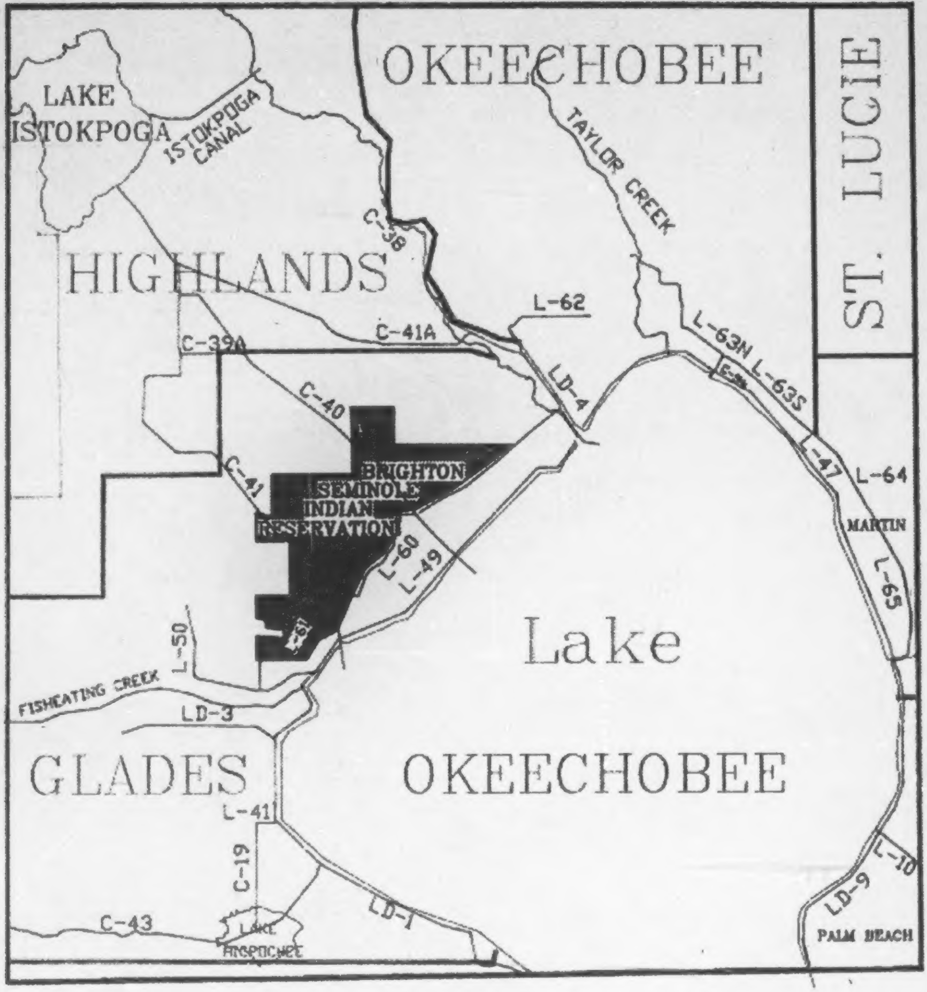
DONE AND EXECUTED this 29th day of October, 1987.

GOVERNOR

Tom Gardner
EXECUTIVE DIRECTOR, DEPARTMENT OF
NATURAL RESOURCES FOR THE BOARD
OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE
STATE OF FLORIDA

, VICE CHAIRMAN
~~EXECUTIVE DIRECTOR~~, SOUTH
FLORIDA WATER MANAGEMENT DISTRICT

CHAIRMAN, TRIBAL COUNCIL SEMINOLE
TRIBE OF INDIANS OF FLORIDA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L-63N
L-63S
LD-4
C-40
L-47
L-64
BRIGHTON SEMINOLE INDIAN RESERVATION
C-41
MARTIN
L-60
L-49
L-65
Lake
L-50
FISHEATING CREEK
LD-3
GLADES
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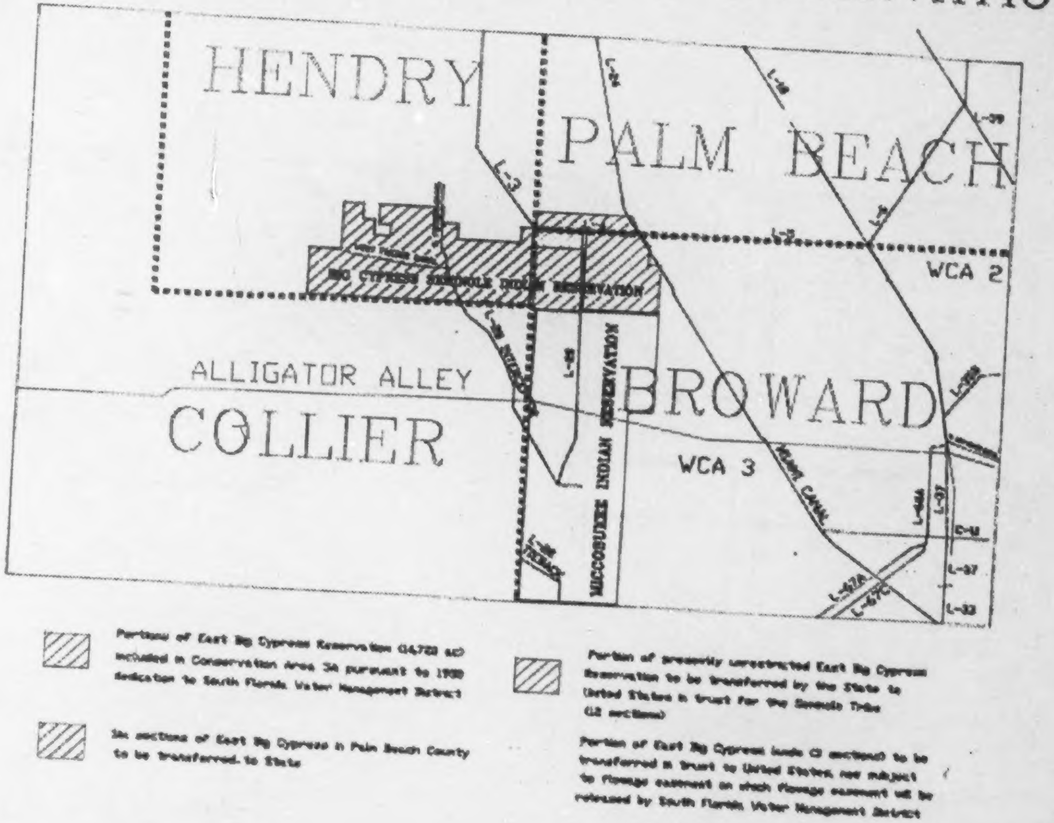
BRIGHTON RESERVATION

BIG CYPRESS SEMINOLE RESERVATION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BROWARD
COLLIER
ALLIGATOR ALLEY
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WCA 3
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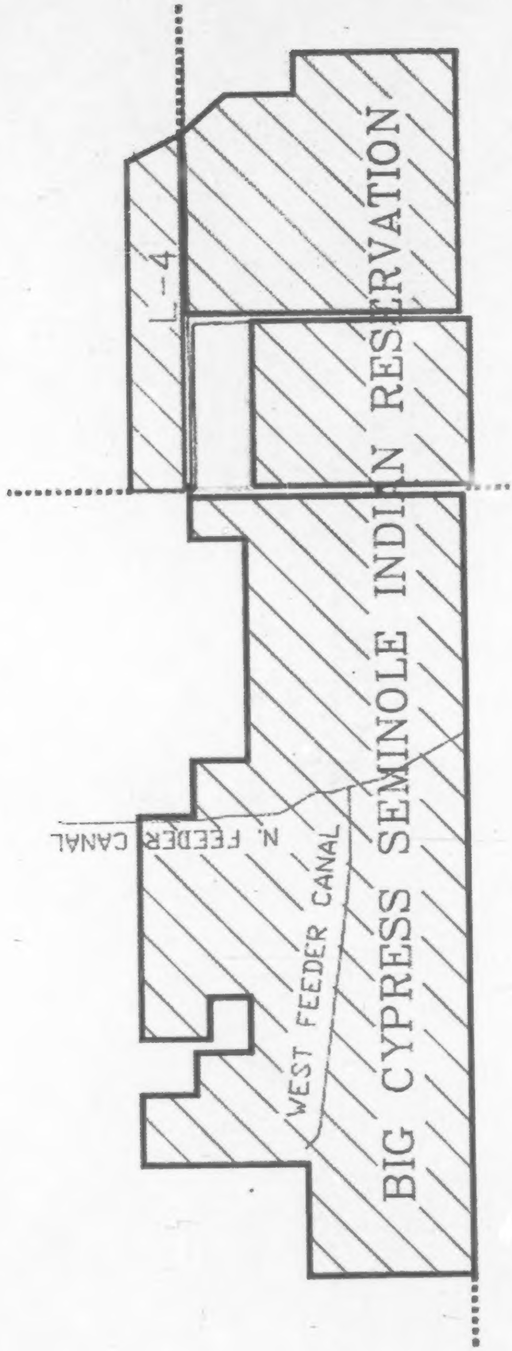
MICCOSUKEE INDIAN RESERVATION
MIAMI CANAL
L-3
L-24
L-28
L-39
L-5
L-67A
L-67C
L-37
L-33
C-11
Portions of East Big Cypress Reservation (14,720 ac) included in Conservation Area 3A pursuant to 1950 dedication to South Florida Water Management District
Six sections of East Big Cypress in Palm Beach County to be transferred to State
Portion of presently unrestricted East Big Cypress Reservation to be transferred by the State to United States in trust for the Seminole Tribe (12 sections)
Portion of East Big Cypress lands (3 sections) to be transferred in trust to United States, now subject to flowage easement on which flowage easement will be released by South Florida Water Management District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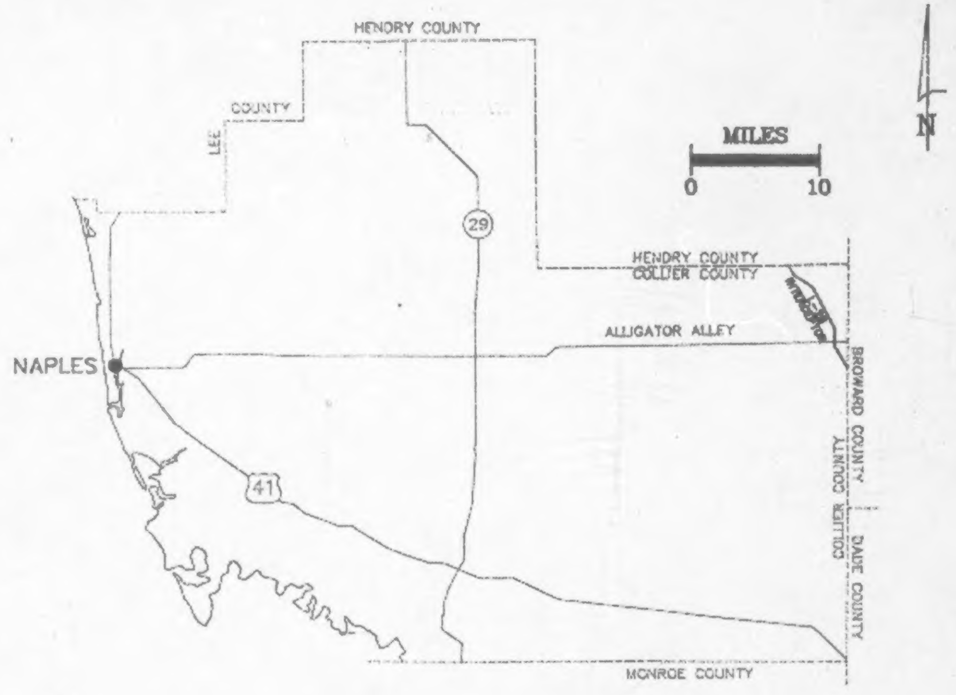
L-4
WEST FEEDER CANAL
N. FEEDER CANAL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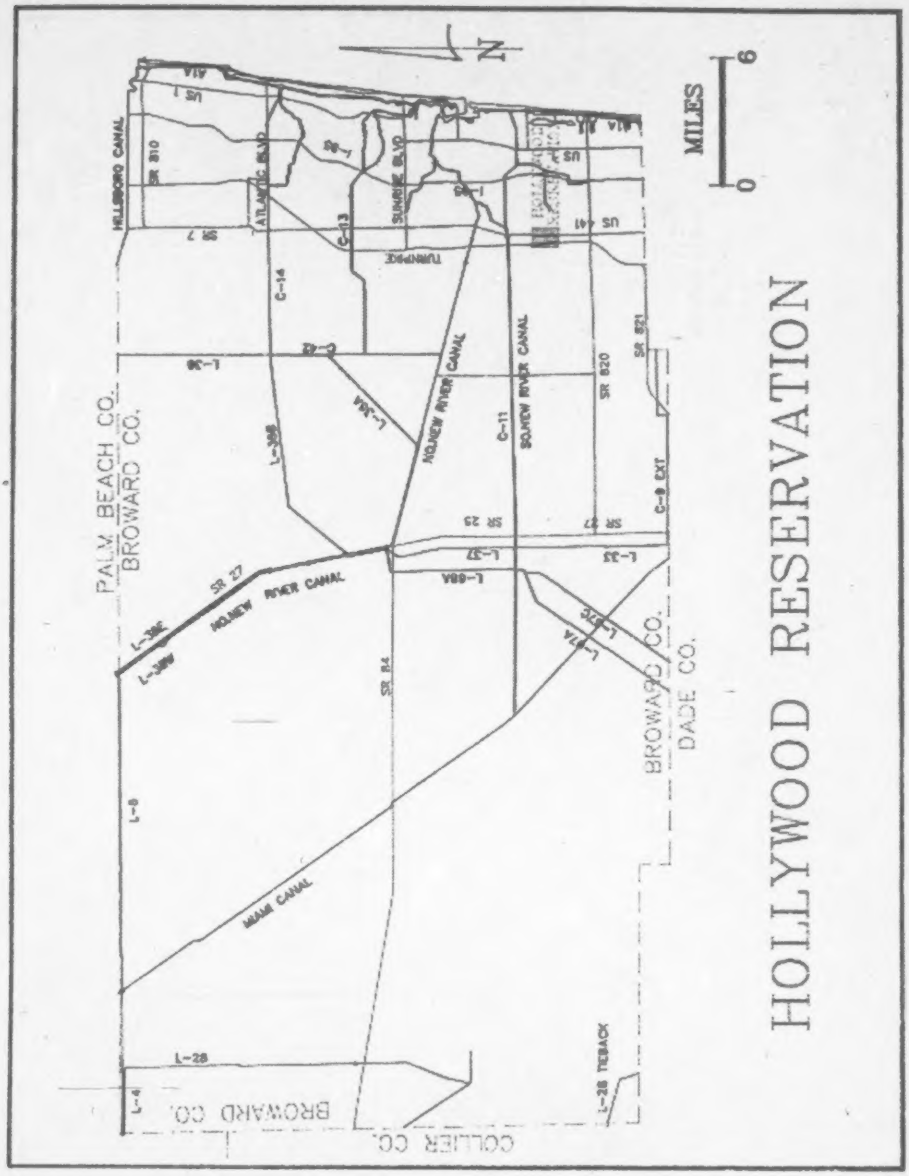
DADE COUNTY
MONROE COUNTY

IMMOKALEE RESERVATION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SUNRISE BLVD
TURNPIKE
C-42
L-36
L-36A
L-36B
NO.NEW RIVER CANAL
C-11
SO.NEW RIVER CANAL
SR 820
SR 821
US 441
HOLLYWOOD RESERVATION
SR 25
SR 27
C-9 EXT
L-33
L-37
L-68A
L-37C
L-37A
SR 84
MIAMI CANAL
L-5
L-28
L-4
L-28 TIEBACK
BROWARD CO.
DADE CO.
COLLIER CO.
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MILES
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6

HOLLYWOOD RESERVATION

WATER RIGHTS COMPACT

AMONG THE

SEMINOLE TRIBE OF FLORIDA,

THE STATE OF FLORIDA

AND

THE SOUTH FLORIDA

WATER MANAGEMENT DISTRICT

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WATER RIGHTS COMPACT AMONG THE SEMINOLE TRIBE OF FLORIDA, THE STATE OF FLORIDA AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

WHEREAS, the parties to the Compact recognize the importance of tribal self-determination and economic development to the Tribe and the people of the State of Florida; and

WHEREAS, the parties to the Compact recognize the importance of protection of the environment and natural resources to the well being of all; and

WHEREAS, the parties to the Compact recognize that the general public interest is served by supporting the self-determination goals of the Tribe, by protecting and enhancing the environment, and by exercising prudence in the use of natural resources; and

WHEREAS, the parties to the Compact desire to protect the interests of all in available waters through cooperation and planning for present and future needs of the Tribe and others; and

WHEREAS, the Seminole Tribe of Florida claims paramount rights to the use of water under Federal law and freedom from State regulation; and

WHEREAS, the parties to the Compact disagree as to the scope and/or existence of the rights; and

WHEREAS, the regulation of consumptive water use and surface water management under Florida law within that portion of the State of Florida encompassing the Seminole Tribe's Federal

Reservations and Tribal Trust lands has been delegated by the State to the South Florida Water Management District; and

WHEREAS, the Seminole Tribe does not presently recognize the authority of the State or the District to regulate consumptive water use and surface water management on the Seminole Federal Reservations and Tribal Trust lands; and

WHEREAS, the parties to the Compact desire to avoid the expense and uncertainty of large scale water rights litigation; and

WHEREAS, the State and the District have recognized an obligation to assist the Tribe in the development of its Reservations by appropriate utilization of the waters of the Reservations so that the Tribe may become economically self-sufficient; and

WHEREAS, the Tribe has agreed to cooperate with the State and the District in the regulation of water use and water management; and

WHEREAS, the Compact is intended to create a comprehensive and effective system of regulation applicable to the Seminole federal Reservations and Tribal trust lands that protect the Tribe's water rights and development potential and is in harmony with the essential terms and principles of the State system; and

WHEREAS, this system would provide for the protection of surface and ground water within and outside of the Tribe's federal Reservations and Tribal Trust lands and prevent adverse environmental impacts; and

WHEREAS, the comprehensive system provides a procedural mechanism for resolving conflicts and establishes respective burdens of the Tribe, the State, the District, and other parties in fairly resolving water use and water management issues; and

WHEREAS, the Seminole Tribe has withdrawn its objections to the Modified Hendry County Plan pending approval before the United States Army Corps of Engineers in return for assurance that Tribal water rights will be protected under the Compact; and

WHEREAS, the Compact is not intended to disturb vested rights; and

WHEREAS, the State, the District, and the Tribe have agreed to cooperate and use their best efforts to identify the extent and quality of water resources available to the Tribe.

NOW, THEREFORE, the parties to the Compact agree as follows:

I. DEFINITIONS

The following terms as used in the Compact shall have the meaning assigned in this section, and shall not be understood as having the same meaning as terms defined by state law or by judicial interpretation of state law, unless otherwise expressly stated in the Compact.

A. Action in Federal District Court Actions commenced in the United States District Court for the Southern District of Florida to enforce rights and obligations under the Compact.

B. Board -- The Governing Board of the District with the general powers and duties set forth under Chapter 373, (1986 supp.) of the Florida Statutes, and its successors.

C. District -- The South Florida Water Management District, an agency of the State of Florida created by Chapter 25270, Laws of Florida (1949) and operating pursuant to Chapter 373 Florida Statutes, and its successors.

D. District Rules, Orders, and Regulations -- All lawfully promulgated rules, orders, and regulations adopted by the District or affecting the operations of the District.

E. Essential Terms and Principles of the State System --Non-procedural provisions of the Florida Water Resources Act of 1972 as presently codified in Chapter 373 of the Florida Statutes (supp. 1986) and which are necessary to provide for the beneficial use and management of water and related land resources; to promote the conservation, development, and proper utilization of surface and groundwater; to prevent damage from floods, soil erosion, and excessive drainage; and to protect natural resources, fish, and wildlife.

F. Florida Water Code -- The Florida Water Resources Act of 1972 as codified in Chapter 373 of the Florida Statutes (1986 supp.).

G. Manual -- The Evaluation Criteria Manual approved by Tribe, State and the Board containing specific technical and procedural criteria.

H. Reservations -- Lands designated by the United States Department of the Interior as of the effective date of the Compact, as federal Seminole Indian Reservations physically located within the geographic area under the authority of the District.

I. State -- The State of Florida, its agencies (other than the District), political subdivisions, constitutional officers, officials of its agencies and subdivisions (other than officials of the District).

J. Substantially Affected Third Persons -- Persons, groups, or entities who demonstrate a non-frivolous interest substantially affected by the exercise of rights under the Compact. The Florida Department of Environmental Regulation, the Florida Department of Natural Resources, the Florida Department of Community Affairs, and the Florida Game and Freshwater Fish Commission , successor agencies, and owners of lands within the basin affected by exercise of rights under the Compact are presumed to be substantially affected third parties. This presumption can be rebutted by an affirmative showing that the state agency or landowner does not have an interest that would be substantially affected by the exercise of rights under the Compact.

K. Tribal Trust Lands -- Lands held in trust by the United States for the benefit of the Seminole Tribe, including the Immokolee lands held by the Tribe in fee status in Section 10, Township 47S, Range 29E, Collier County, Florida, as of the effective date of the Compact, and which are physically located within the geographic area under the authority of the District.

L. Tribal Water Code -- A Code adopted by the Tribe which is consistent with the provisions of the Compact and which ensures compliance with the Compact by persons conducting activities on Reservation and Tribal Trust lands.

M. Tribe -- The Seminole Tribe of Indians of Florida or the Seminole Tribe of Florida, a tribe of American Indians recognized by the United States and organized under section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. section 476, and recognized by the State of Florida pursuant to Chapter 285, Florida Statutes.

N. Wetlands -- Areas that are inundated by surface or groundwater with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetative or aquatic life that require saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, wet prairies, river overflows, mud flats and natural ponds.

O. Work Plan -- One or more work plans as described under Part VII., Section A. of the Compact.

II. GENERAL PROVISIONS

A. Obligations of the Tribe in Exercising Rights Under the Compact

1. The obligations of the Tribe in developing its reservations and Tribal Trust lands in exercising its rights under the Compact are limited to those expressly stated in the Compact, the Manual, or applicable federal laws. Nothing in the Compact is intended to divest the State of Florida of any jurisdiction it has as of the effective date of the Compact within the borders of the Seminole Reservations and Tribal Trust lands.

2. Those State laws and District rules, orders, and regulations which are applicable to the Tribe under the terms of the Compact as specified hereafter are expressly incorporated into federal law, and apply to the Tribe as federal law.

3. The Tribe may use any form of testing and monitoring to fulfill obligations under the Compact, if such testing and monitoring is reasonably equivalent to the accuracy and reliability of testing and monitoring customarily used or required by the District.

4. The Tribe shall give permission for the District to make on-the-ground inspections of Tribal facilities affected by the Compact, upon twenty-four (24) hour advance notice. Costs associated with such inspections shall be borne by the District.

5. Upon twenty-four (24) hour advance notice, the Tribe shall allow the District reasonable access to Reservation and Tribal Trust lands for the purpose of performing

testing necessary to fulfill the District's obligations under the Compact.

6. The Tribe is responsible for enforcing the provisions of the Compact, the Manual, and for complying with the terms and conditions of approved work plans on Reservation and Tribal Trust lands. The Tribe has the authority to promulgate a Tribal Water Code to implement and enforce the Compact, the Manual, and the terms and conditions of approved work plans.

B. Tribal Representative

All communication with the Tribe concerning rights and obligations under the Compact shall be through the Tribal office created for such purpose, or through such other party as is expressly designated by Tribal Council Resolution.

C. Notice

All notices provided for under the Compact shall consist of written communication by registered or certified mail to the addresses of the parties or as specified in the Manual. All notices, pleadings, or other materials required to be filed with the District Clerk shall be deemed filed on the date of actual receipt by the District Clerk. All other notices, pleadings or other materials shall be deemed filed upon mailing first class, postage prepaid.

D. Lands To Which Compact Rights Apply

This Compact, the Manual, the Tribal Water Code, and applicable federal laws constitute the sole sources of regulation of consumptive water use, and the management and storage of surface water and groundwater on Reservation and Tribal Trust lands.

E. Effective Date of Compact

This Compact among the Tribe, the State, and the District, shall not become final and shall be without binding force and effect until all requirements enumerated in section 2 of the Settlement Agreement between the parties to Seminole Tribe of Indians of Florida v. State of Florida, No. 78-6616-CIV (S.D. Fla) (to which the Compact will be attached as Exhibit C) have been satisfied. This Compact, in the form approved by the Board on May 15, 1987, shall be null and void on December 31, 1988 unless it has received all necessary approvals and/or ratifications by that date.

F. Inapplicability of Compact to Existing Facilities, Projects, and Improvements on Reservations and Tribal Trust Lands

1. Existing facilities, projects, and improvements, other than works of the District, which are located on Reservations or Tribal Trust lands, and which may be inconsistent with the criteria and standards set forth in the Compact, shall be required to meet the criteria and standards set forth in the Compact and the Manual only if:

    a. the Tribe intends to integrate such existing facilities, projects and improvements into new developments under the Tribe's work plan when:

        i) the additional flow to be routed to the existing facilities, when combined with current design flows, exceeds the design capacity of the existing facilities;

        ii) the additional flow to be routed to the existing facilities will originate from areas of significantly different land use;

iii) the existing facilities will be modified to accommodate the new water supply or water management development; or

b. such existing facilities, projects, and improvements substantially harm, or pose a threat of serious irreparable harm, to lands other than Reservation and Tribal Trust lands. Such existing facilities, projects, and improvements shall be required to meet the criteria and standards of the Compact only to the extent necessary to mitigate the demonstrated harm.

2. Such existing facilities, projects, and improvements which are located on Reservations and Tribal Trust Lands and which may be inconsistent with the criteria and standards set forth in the Compact shall not be required to meet the criteria and standards set forth in the Compact except in the circumstances set forth under subsection 1. of this section.

3. Notwithstanding any other provision of the Compact or Manual, the Tribe shall not be required to institute mandatory water utility pressure reductions during a declared water shortage on systems serving Big Cypress or Brighton Reservations.

G. Description of Numbering System for Compact

Letters and numbers designating provisions of the Compact shall be in the following order, and shall be identified in the following manner: "I" is a Part; "A." is a section; "1." is a subsection; "a." is a paragraph; and "i)" is a subparagraph.

H. Computation of Time

In computing any period of time prescribed or allowed under the Compact, the day of the act from which the designated period of time begins shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the periods shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays include those days so designated under State and federal law. The date of final District action under Part VII. of the Compact shall be the date on which the written order specified in Section I. of this Part is filed with the District Clerk.

I. Requirement for Written Orders / Final District Action

Any act or event which constitutes final District action under the Compact shall be reduced to a written order, filed with the District Clerk, and served on the Tribe within ten (10) days of such act or event. Service on other persons shall be as provided under Part VII. of the Compact.

J. Relationship Between Compact, Manual and Tribal Water Code

1. Provisions of the Compact listed in paragraphs a. through e. of this subsection shall be implemented according to the Manual:

    a. Part III.B.; III.C.6.; III.D.; and

    b. Part IV.; and

    c. Part V.A.; V.B.; V.C.; V.D.; and

    d. Part VI.B.; VI.D.; and

    e. All of Part VII.

2. If the Tribe complies with the applicable requirements and objectives of the Compact, then the Tribe, with the exception of the procedural chapter of the Manual, does not need to meet the specific criteria outlined in the Manual. If the Tribe satisfies the specific criteria outlined in the Manual, a presumption shall arise that the Tribe has met the requirements and objectives of the Compact.

3. Following the procedures set forth under Part VII.G. of the Compact, the parties to the Compact may modify, amend, or otherwise change the Manual.

4. One of the purposes of the Manual is to further define and explain the conditions, criteria and objectives of this Compact. Any ambiguities in the Compact should be resolved, if possible, by reference to the Manual. However, in no event, shall the Manual be used to alter or modify terms or provisions contained in the Compact which are not facially ambiguous. Conflicts between the Compact and the Manual shall be resolved by adhering to the Compact. Conflicts between provisions of the Tribal Water Code and the Compact shall be resolved by adhering to the Compact. Conflicts between provisions of the Tribal Water Code and the Manual shall be resolved by adhering to the Manual.

5. In any instance where the District establishes a new program of general applicability throughout the District or institutes changes in any rules, regulations, or procedures, which are of general applicability throughout the District, or institutes changes to rules,

regulations or procedures affecting only the basin or area within which Tribal lands to which the Compact applies, and which are inconsistent with or not addressed by the Compact or Manual:

a. The District shall notify the Tribe of said changes in writing upon initiation by the District of rulemaking; and

b. Within sixty (60) days of adoption the Tribe shall elect to proceed under either the new provision or under the prior provision if any. If the Tribe elects to proceed under the new provisions, the Manual shall be appropriately amended.

K. Promulgation and Amendment of Tribal Water Code

The Tribe shall provide the District with a copy of proposed provisions and proposed amendments of the Tribal Water Code at least ten (10) days before adoption by the Tribe of such provisions and amendments.

III. CONSUMPTIVE WATER USE

A. Protection and Regulation of Tribal Water Use

1. The principles set forth in this part of the Compact are intended to prescribe and protect the Tribe's rights to the use of water.

2. The Tribe's rights shall not be adversely affected or limited by any change subsequently made in the State system or the District rules, regulations, and orders affecting preference or priority of water use. The Tribe shall have a preference or priority equal to any preference or priority which may be established for the same use under State law for any other party after the effective date of the Compact.

3. After the effective date of the Compact the Tribe will have an opportunity for significant input into water related land use decisions on lands surrounding the Reservation. In return for this increased input from the Tribe, surrounding landowners should be able to rely on past land use decisions without fear that later exercise of tribal rights will negatively impact them. Present surrounding land uses do not present any inherent conflicts.

4. It is consistent with the public interest to take steps and means to avoid the undesirable effects of inflexibility in the transfer of water rights while retaining adequate security for any such existing rights. Water rights exercised under any existing system should not become so inflexible that water resources cannot meet new needs and demands by transfer from existing uses to new uses which are more beneficial.

B. General Criteria

The Tribe must give reasonable assurances that any proposed consumptive water use:

1. will not cause significant inland movement of either surface saline water or the underground saline water interface; will not cause either significant upconing of saline water that may be beneath freshwater or vertical leakage of connate saline water; or otherwise reduce the amount of potable water;

2. will not have a significant adverse impact on lawful land uses including wetlands located on lands other than Reservation and Tribal Trust lands;

3. will not cause significant adverse environmental impacts;

4. will not cause significant pollution of the surface water or the aquifer;

5. is a reasonable-beneficial use ;

6. will not interfere with presently existing legal uses of water and users of water protected under the Compact; and

7. is consistent with the essential terms and principles of the State system as defined in the Compact.

C. Competing Uses

1. The Tribe shall be given a preference in approval of Work Plans involving withdrawal and use of the

groundwater resources underlying Reservation and Tribal Trust lands.

a. The Tribe shall be entitled to a preference when its proposed use conflicts with a proposed use by a non-Tribal user and the recognition of such preference is reasonably necessary to the accomplishment of the Tribe's lawful purposes.

b. The Tribe shall be entitled to a preference to a reasonable share of available resources when its proposed use conflicts with a then pending application by a non-Tribal user to renew or increase its authorized use of water and the recognition of such preference is reasonably necessary to the accomplishment of the Tribe's lawful purposes.

2. The Tribe through its exercise of rights under this Compact, is afforded an opportunity to perfect its rights to water as though it had been an existing user and had elected to perfect its rights to water on or after March 2, 1974 (the date of implementation of Part II, Chapter 373, Florida Statutes).

3. If two (2) or more proposed uses which otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, such proposed competing uses must first satisfy the standard conditions for approval which apply to each applicant. The Board shall consider the reasonable beneficial uses for the water as well as the extent to which the proposed use is reasonably necessary for the Tribe to achieve its purposes.

4. No Tribal preference shall be asserted in a manner that will cause catastrophic changes to aquifer systems. No Tribal preference shall be asserted directly or indirectly for the purpose of exporting water for use offsite of Reservations and Tribal Trust lands.

5. Determination of any tribal claim that offsite activities or water consumption have caused water quality problems in aquifer systems underlying Reservation and Tribal Trust lands shall be made without regard to any preferred rights of the Tribe under this section.

6. Drawdown Limitations

This subsection specifies maximum drawdowns in artesian aquifers. Actual drawdowns permitted by the District pursuant to the Compact with respect to the Tribe or Chapter 373, Florida Statutes, with respect to adjacent landowners may be substantially less than these maximums.

a. Exercise of Tribal Preference

In exercising its preference rights, the Tribe shall not cause more than a twenty (20) foot drawdown of the potentiometric head of any artesian aquifer system at the boundaries of the Reservation or Tribal Trust lands involved unless it has specific written authority or agreement from affected landowners.

b. Adjacent Landowners

No development of groundwater resources on lands adjacent to any of the Seminole Reservations or Tribal Trust lands will be permitted by the District if the drawdown of the potentiometric head of any artesian aquifer system will be more than twenty (20) feet at the boundary of the Reservation unless it has specific written authority or agreement from the Tribe.

7. All water use permits issued by the District after the date this Compact is approved by the Board to non-Tribal users whose permit rights may be affected by the Tribal rights confirmed under the Compact, shall include a special condition advising the permittee of the Compact and its potential impact on any future permit renewals. Appropriate notice of Tribal rights under the Compact shall be sent to all potentially affected holders of existing permits.

8. The Tribe shall mitigate adverse impacts on lawful single family home domestic users existing as of the date the Compact is approved by the Board, where such adverse impacts are caused by the exercise of Tribal rights under the Compact. Adverse impact shall be determined according to the Manual.

D. Water Shortage

1. Reductions in Tribal water use due to water shortages shall be made in the same manner and percentage as the equivalent class of use, source, and manner of withdrawal as required under the District water shortage plan. The Tribe may request a variance from water use restrictions imposed pursuant to this Section, using the procedures and criteria in the Manual. Variances shall not be unreasonably denied. The Tribe shall not be required to reduce its water sources, uses, and methods of withdrawal more than the reduction in sources, uses, and methods of withdrawal of the

least restricted user of the same source, use, and method of withdrawal class except as authorized under Chapter 7 of the Manual.

2. Declared water shortages occurring solely on Reservation and Tribal Trust lands shall be governed solely by the Tribal Water Code provided that the Tribal provisions satisfy the objectives of the District and that the applicable Tribal procedures are consistent with the Compact.

IV. MANAGEMENT AND STORAGE OF SURFACE WATERS

A. General Criteria

The Tribe must give reasonable assurances that the proposed surface water management system:

1. provides adequate flood protection and drainage;
2. will not cause significant adverse water quality and quantity impacts on receiving waters and non-Tribal lands;
3. will not cause discharges to ground or surface waters which result in any violation of State water quality standards;
4. will not cause significant adverse impacts on surface and groundwater levels and flows;
5. will not cause significant adverse environmental impacts;
6. can be effectively operated and maintained;
7. will not adversely affect public health and safety;
8. will not otherwise be harmful to the water resources of the District; and
9. is consistent with the essential terms and principles of the State system as defined in the Compact.

V. MISCELLANEOUS ENVIRONMENTAL

A. Water Well Construction

The Tribe must give reasonable assurances that the construction, alteration, operation, maintenance, and abandonment of any water well on Reservation and Tribal Trust Lands will not be harmful to the water resources of the District and will not be inconsistent with the purposes of the Compact.

B. Underground Injection

1. The Tribe must give reasonable assurances that the construction, alteration, operation, maintenance, and abandonment of any underground injection facility will not be harmful to the water resources of the District and will not be inconsistent with the purposes of the Compact.

2. The District shall, independently of the federal authority having jurisdiction over the matter, review requests by the Tribe for installation and operation of underground injection systems in accordance with the provisions of the Manual.

C. Water Quality Criteria

Tribal activities shall not cause significant pollution of ground or surface waters. The Tribe shall comply with those water quality standards imposed by the District as provided in the Compact, the Manual, and with federal pesticides requirements on Reservation and Tribal Trust lands. The Tribe shall use only pesticides, herbicides, fertilizers, and other agricultural chemicals which have been approved by the Environmental Protection Agency and the U.S. Department of Agriculture for use in Florida and shall apply the pesticides, herbicides, fertilizers, and other agricultural chemicals in strict accordance with the label directions. Upon written Tribal Council Resolution by the Tribe, the District shall condition permits or other requests for approval reasonably expected to affect Tribal interests by requiring adherence to those water quality standards imposed by the law. The District shall cooperate with the Tribe and appropriate State and federal agencies to enforce the requirements of this subsection against the use of pesticides, herbicides, fertilizers, and other agricultural chemicals by third persons on lands other than Reservation or Tribal Trust lands in a manner which causes water quality violations. The District's cooperation may include, but not be limited to, requiring reasonably appropriate monitoring by permittees and other appropriate actions authorized by state or federal law.

D. Wetlands Protection

1. The Tribe will provide reasonable assurances that wetland values and functions will be maintained. Wetlands and proposed impacts on wetlands shall be evaluated using sound engineering and ecological principles.

2. Wetlands greater than forty (40) acres, or covered under subsection 3. of this section, will be protected in accordance with the criteria set forth in the Manual.

3. Wetlands of forty (40) acres or less which are incorporated within a surface water management system or are otherwise protected, shall be governed by subsection 2. of this section.

4. Wetlands of forty (40) acres or less which are not incorporated within a surface water management system or are not otherwise protected, may be disturbed, provided that an upland system of equivalent size is set aside in an area committed for passive uses. The wetland and upland areas to be

traded shall be specifically described in any Work Plan proposed under Part VII., Section A. of the Compact. The District may waive the requirement for uplands set aside under such circumstance as would justify such a waiver for non-Tribal interests.

VI. SPECIAL PROVISIONS APPLICABLE TO SPECIFIED RESERVATION AND TRIBAL TRUST LANDS

A. Landowner Agreements

The Tribe and any landowners who may be affected by operations of the Tribe under a tribal Work Plan, may be protected and governed by site specific criteria applicable to groundwater withdrawals and, if applicable, to surface water withdrawals, determined by private agreement, which may include provisions for arbitration. Criteria for groundwater withdrawals may apply to well placement, construction and operation. Similar criteria for surface withdrawal pumps or other works will be identified, if appropriate, to implement the purpose and intent of this subsection. Any such private agreement may be presented to the District for approval and if so approved by the Board the agreement shall have, as between the parties to such agreement, the force and effect of the Compact and, specifically, shall prevail in any dispute between the parties to such private agreement in the event of a conflict with the Compact, the Manual or with other applicable permitting criteria of the District. Nothing herein shall affect the authority of the District to evaluate Work Plans, permit applications, or other requests for approval under other provisions of the Compact or state law. Nothing herein shall be construed to preclude a third person from asserting that such Work Plan, permit application, or other request for approval adversely affects their substantial interests. The private agreement between the Tribe and United States Sugar Corporation entered into prior to May 15, 1987 is attached hereto as Exhibit A and made a part hereof. The private agreement between the Tribe and Lykes Bros., Inc. entered into prior to May 15, 1987 is attached hereto as Exhibit B and made a part hereof. Both private agreements are hereby approved.

B. Brighton Reservation

1. The Tribe shall be entitled to fifteen percent (15%) of the total amount of water which can be withdrawn from the District canals and from District borrow canals by all users from surface water within the Indian Prairie Basin as described in Rule 40E-21.691(6)(a), Florida Administrative Code (1987), (legal description to be corrected in Florida Aministrative Code) calculated by the District on a monthly basis. The Tribe shall not be entitled to any preference to withdrawals in excess of fifteen percent (15%) from such District canals. The Tribe shall withdraw its fifteen percent (15%) share of the waters in the specified canals under procedures detailed in the Manual which, in the light of experience, are reasonably designed to assure the Tribe of the opportunity to make its entitled withdrawals on a monthly basis. Notwithstanding the provisions of the Manual, the Tribe shall have the opportunity to demonstrate that it is not receiving its entitled share of the waters in the specified canals because of the actions of the District or of some third party. The Tribe shall have the burden of proof on this issue and shall assert any such violations of the Compact under the provisions of Part VII. of the Compact and the Manual.

2. The Tribe shall have access to a fractional share of surface waters from Lake Okeechobee for use on the lands of the Reservation located within the Lakeshore Perimeter Basin as described in Rule 40E-21.691(3)(d), Florida Administrative Code (1987), for water use as it exists on the effective date of the Compact. Such fractional share shall be calculated from the ratio of the total area of the water supply service area as it exists on the effective date of the Compact to the total

land area of the Brighton Reservation within the Lakeshore Perimeter Basin for water use as it exists on the effective date of the Compact.

3. Expansion by the District of the geographical boundaries of the area receiving surface water from a specific source for water use purposes shall entitle the Tribe to a fractional share of any additional available water in the District canals and District borrow canals for use on the Brighton Reservation. Such fractional share shall be calculated from the ratio of the total land area of the Brighton Reservation within the expanded service area to the total land area of the expanded service area. This subsection, however, shall not serve to diminish the percentage of surface water of the Indian Prairie Basin which was available to the Tribe before the expansion of the service area, and which the Tribe may elect to retain pursuant to subsection 1. of this section.

C. Hollywood (Dania) Reservation

1. On the Hollywood (Dania) Reservation, the Tribe shall have the rights set forth under Part III. of the Compact, except that with respect to public water supply permittees of the District whose permits are approved as of the effective date of the Compact, the Tribe shall have no more than the rights accorded public water supply permittees of the District whose permits are approved as of the effective date of the Compact.

2. After receiving notice pursuant to the Manual of an application potentially affecting Tribal rights under the Compact, the Tribe may:

a. Object to the application pursuant to the Manual; or

b. Require the District, if the potentially competing use request is granted, to order the permittee to accept the Reservation as a bulk consumer of the permittee's system. The District shall adjust the permittee's allocation to include the additional water needs of the Tribe, if such needs are not included in the allocation granted. The District shall place a condition in the permittee's permit that the permittee must allow the Tribe to connect to the permittee's system and must charge the Tribe at a rate not to exceed the most favorable consumer rate charged to any consumer of the permittee's system. If the additional water needed to supply the Tribe cannot be withdrawn without causing significant adverse impacts, the District shall place a condition in the permit that the permittee must satisfy the reasonable-beneficial needs of the Tribe before satisfying the additional needs of non-Tribal users. It is understood that this procedure is not intended as a precedent for any other situation.

D. Big Cypress Reservation

The Tribe shall be entitled to withdraw from any surface water resources on the Big Cypress Reservation that percentage of the water available within the South Hendry County/L-28 Gap Water Use Basin as described in rule 40E-21.691(7)(c), Florida Administrative Code (1987), as the lands of the Big Cypress Reservation bear to the total land acreage within the basin.

VII. ADMINISTRATIVE PROCEDURES

A. Submission Approval and Amendment of Work Plans

The Tribe, before commencing any work that is covered by the provisions of this Compact, shall submit a work plan to the District, or, where required, an amendment to any work plan, under the procedures specified in the Manual. Such procedures shall give interested parties adequate notice of Tribal plans and an opportunity to be heard, in accordance with the timeframes set forth in the Manual. Such procedures shall also give the District staff sufficient information to properly evaluate the proposals in accordance with the criteria and principles contained in Parts I. through VI. of the Compact and in accordance with the detailed provisions of the Manual.

B. Implementation of Work Plans After District Action

Following District action, the Tribe may request the Board for a rehearing or shall give notice of its intent to implement the Work Plan as approved following final District action or implement the proposed Work Plan or amendment without complying with part or all of final District action in accordance with the timeframes and procedures set forth in the Manual. Initiation of federal court action by the District or third parties shall be in accordance with the timeframes set forth in Part VIII. of the Compact and the procedures contained in the Manual.

C. Dispute Resolution; Exhaustion of Administrative Remedies Before Court Action

The Tribe and the District shall use best efforts to resolve disputes concerning the enforcement of rights and obligations created by the Compact through informal meetings, mediation, arbitration or third party facilitation. Before commencing action, in accordance with the provisions of Part VIII. of the Compact in the federal district court for violations of the Compact by any party to the Compact or third party, notice shall be given to the Tribe or the District, as the case may be, and remedies provided in the Manual shall be exhausted under procedures established in the Manual.

D. Tribal Water Code

The Tribe, through a Tribal water code, shall enforce the provisions of the Compact and the Manual and terms and conditions of approved Work Plans against persons conducting activities on Reservation and Tribal Trust Lands. Notwithstanding this provision, the Tribe may in individual cases through Tribal Council resolution request the District to enter Reservation and Tribal Trust Lands for the purpose of enforcing the provisions of the Compact against persons other than the Tribe conducting activities on Reservation or other Tribal Trust Lands in accordance with procedures established in the Manual.

E. Tribal Challenge to District Approval of Applications by Third Parties

If the Tribe perceives that permit applications or other requests for approval by third parties from the District would conflict with Tribal rights under the Compact, the Tribe shall give the District adequate notice and shall raise its objections with respect to such permit applications or other request for approval in accordance with the timeframes set forth in the Manual before challenging such permit applications or requests in federal district court. The District shall timely notify the Tribe by certified mail, return receipt requested of such permit applications or other requests for approval. The dated return receipt from the U.S. Postal Service shall be attached to the staff report or other proposed District action and shall be conclusive evidence that the Tribe has been properly noticed pursuant to this section. The District's failure to comply with this section shall not deprive the

Tribe of rights it would have been able to assert had the District complied with this section. In the case of third party permit applications where a request for administrative hearing is filed, the Tribe shall have thirty (30) days from the date of either filing of the request for hearing, or Board evaluation of a Tribal notice of objection, whichever occurs later to make one of the elections set forth in the Manual. If one of these elections is made, the Tribe may not file any action in federal district court until final District action has occurred. A court action filed under this paragraph must be filed within thirty (30) days of final District action. The Tribe shall not file any such action in federal district court until final District action has occurred.

F. Violations of the Compact, the Manual, or the Terms of any Approved Work Plan by the Tribe or the District

Any substantially affected third parties who are substantially affected by actions of the Tribe or the District which are perceived to be in violation of any of the provisions of the Compact, the Manual or the terms and conditions of any approved Work Plan shall have the right to challenge such actions in procedures established in the Compact and the Manual. Persons other than the State or the District with claims over which the Tribe has jurisdiction must exhaust Tribal remedies.

Substantially affected third persons may file a written complaint with the District Clerk alleging violation of the Compact, Manual or the term of any approved Work Plan. Upon receipt of a complaint, the District shall conduct an investigation and make a determination of its intended action in accordance with the procedures set forth in the Manual. The Complainant or Tribe may file a request for a hearing before the Board within fourteen (14) days of notice of the District's findings.

G. Modification and Amendment of Manual

1. The initial Manual shall be the Manual approved by the Board in conjunction with the approval of the Compact. The Manual shall become effective on the effective date of the Compact.

2. On or before March 1 of any fiscal year, a party to the Compact may propose to the other parties to the Compact a modification, amendment, or other change in the Manual. All such proposals shall be made in good faith belief that the proposals are consistent with the provisions and intent of the Compact. Non-parties may propose amendments to those specific provisions of the Manual which establish criteria that apply to both Reservation land and adjacent land and shall be given an opportunity to be heard.

3. The Tribe, the State, and the District shall make a good faith attempt to consider and agree upon modifications, amendments, and other changes in the Manual which are consistent with the provisions and intent of the Compact.

4. Upon agreement among the Tribe, the State, and the District to modify, amend, or otherwise change the Manual, the District shall publish and provide notice as described in the Manual.

   a. Substantially affected third persons may, within fifteen (15) days of publication of notice, request the District for a hearing before the Board at which the sole issue shall be whether the modification, amendment, or other change in the Manual violates the Compact. The Board may reject frivolous requests for hearing and requests filed by persons lacking a non-frivolous interest which is substantially affected.

b. Requests by a substantially affected third person for a hearing shall contain the information and follow the form set forth in the Manual.

c. Within five (5) days of receipt of a request for hearing, the District shall provide the Tribe and the State with copies of the request and all other materials filed.

d. Minor, nonsubstantive changes to the Manual may be made at any time upon agreement of the Tribe, the State and the District. Such changes include, but are not limited to, editorial changes necessary for clarity and change of address. Neither notice nor an opportunity for hearing need be given before such changes become effective. When the parties agree upon substantive changes pursuant to this section, minor, nonsubstantive changes previously made, but not noticed, shall also be noticed.

5. For purposes of this section, the Tribe shall act through its Tribal Council, the District through its Governing Board and the State through the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, or their successors.

VIII. COURT ACTION

A. The parties to the Compact will seek federal legislation giving the District Court for the Southern District of Florida original jurisdiction of all civil actions brought by or against the Seminole Tribe to enforce the Compact's provisions., including enforcement of agreements to arbitrate under the authority of the Compact.

B. No action in federal district court shall be instituted under the Compact unless the party has complied with administrative procedures specified under Part VII. of the Compact and the Manual. Unless otherwise specified in the Compact, any action brought by any person who is not a party to the Compact shall be brought ex rel the District. A party proceeding ex rel may not challenge the validity of any final District action.

C. In any action commenced under the Compact, a special master shall be appointed to report to the federal district court on questions of fact and law, unless the court makes a determination, in the exercise of sound judicial discretion, that use of a special master is not warranted. Actions under the Compact shall be decided on an expedited basis.

D. Except for those persons having Tribal remedies, the judicial procedures specified in this part and the administrative procedures specified in Part VII. of the Compact shall be the exclusive procedures for resolution of any matter or dispute arising under the terms of the Compact or involving Tribal water use and any determination made under these procedures shall be final for all purposes, subject only to appeal from decisions of the federal district court presently allowed by federal law.

E. In an action brought under the Compact for permanent injunctive relief or in any final determination on the merits, the substantially prevailing party shall be entitled to costs and attorney's fees.

F. The Seminole Tribe of Florida, the State of Florida and the South Florida Water Management District expressly waive any immunity each may have to civil actions for injunctive relief commenced to enforce the Compact and its implementing federal legislation.

G. The District or any person who timely requested a hearing or filed a notice of reliance, as set forth in the Manual, shall have thirty (30) days after the Tribe files notice of its intent with regard to the Work Plan, to commence suit in federal court,. Such action shall not be ex rel the District. Persons who requested a hearing or filed a notice of reliance shall have an additional ten (10) days following expiration of the thirty (30) days to commence suit in federal court ex rel the District to enforce final District action.

H. The Tribe may file suit in federal district court on a third party's permit within thirty (30) days of final District action.

I. 1. Any action filed in federal court shall deal separately with disputed issues of District procedure, interpretations of law, determinations of fact or policy within the District's exercise of delegated discretion. If the federal court determines that either the fairness of the proceeding or the correctness of the action may have been impaired by a material error in procedure or failure to follow prescribed procedure, then the federal court shall remand the case for further District action. If the federal court finds that the District erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall either set aside or modify the District action or remand the case to the District for further action under a correct interpretation of the provision of law.

2. This subsection applies when a formal hearing has been hels pursuant to section 120.57, Florida Statutes (1985). If the District's action depends on any fact found by the District in a proceeding meeting the requirement of section 120.57, Florida Statutes, the federal court shall not substitute its judgment for that of the District as to the weight of the evidence on any disputed finding of fact. The federal court shall, however, set aside the District's action or remand the case to the District if it finds that the District's action depends on a finding of fact that is not supported by competent or substantial evidence in the record. The federal court shall remand the case to the District if it finds that the District exercise of discretion is either outside the range of discretion delegated to the District by law; inconsistent with a District rule; inconsistent with an officially stated District policy or prior District practice, if deviation therefrom is not explained by the District; or otherwise in violation of a constitutional or statutory provision. However, the federal court shall not substitute its judgment for that of the District on an issue of discretion. Such review shall not be de novo. Section 373.114, Florida Statutes (1985), shall not apply.

J. No action in federal district court may be commenced until the Board has taken final District action, unless delay would cause irreparable injury and the relief requested is a temporary restraining order.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals on the dates set forth below.

DEPARTMENT OF NATURAL RESOURCES

Date

Legal Form Approval

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Date

Legal Form Approval

SEMINOLE TRIBE OF INDIANS OF FLORIDA

Date

Legal Form Approval

Agreement Between the Seminole Tribe and United States Sugar Corporation for Allocation of Water from the Lands of the Big Cypress Seminole Reservation and the United States Sugar Corporation Lands Adjacent Thereto

WHEREAS, the UNITED STATES SUGAR CORPORATION (the "Corporation") owns certain lands adjacent to the Seminole Big Cypress Reservation (the "Reservation"); and

WHEREAS, the Corporation has received certain permits from the South Florida Water Management District for development of groundwater and surface water on these lands; and

WHEREAS, the Seminole Tribe (the "Tribe") has negotiated a water rights compact with the South Florida Water Management District and the State of Florida; and

WHEREAS, the Tribe and the Corporation are desirous of avoiding any controversy over these matters; and

WHEREAS, it appears possible to avoid any conflict between the Tribe and the Corporation by entering into a site specific agreement allocating the designated water resources; and

WHEREAS, the essential principles of an agreement have been agreed to by the Tribe and the Corporation; and

The Tribe and the Corporation agree as follows:

1. An area of land comprising Sections 31, 32, 33, 34, 35, 36, Township 47 South, Range 34 East and Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, Township 48 South, Range 34 East of the Corporation's land and comprising certain lands owned by the Tribe which lands will be identified by August 15, 1987, will be identified as a Zone of Influence within which water withdrawals may have an impact on available water supplies beyond the boundary of each party's ownership (such lands together referred to herein as the "Zone of Influence"). If it is determined, based upon pump test data acquired by the Tribe and the Corporation that water withdrawals in or beyond this Zone of Influence will have impacts which are inconsistent with this Agreement, then

Exhibit A

the party creating these impacts will mitigate them by limiting the amounts and methods of withdrawal within the Zone of Influence. For purposes of determining the maximum allowable withdrawals from the Zone of Influence, the entire general area suitable for agricultural development will be considered as a single agricultural development regardless of the timing of development by the Tribe and the Corporation. Within the Zone of Influence, water supplies will be allocated and amounts and methods of withdrawals authorized so that the Tribe and the Corporation accommodate and protect the water needs of each other and conduct economic activities without operational interference. Within the Zone of Influence neither party will utilize inefficient methods of withdrawal or use or otherwise consume water by wasteful means resulting in adverse impacts or limitations beyond the ownership of each party to the degree that adequate supplies become unavailable to the other. It is understood that the Tribe or the Corporation may use the water withdrawn anywhere for non-agricultural purposes although the amount of withdrawals will be limited to amounts normally allowed by the District as of the date of the Compact for agricultural uses on available acreages. For purposes of determining maximum allowable withdrawals, withdrawal needs shall be determined based upon agricultural uses to include, without limitation, citrus, other fruits, vegetables, and improved pasture. Agricultural uses assumed for purposes of withdrawal must be feasible based upon soils and other natural resource or climate limitations. The determination of withdrawal limitations and methods shall be based only upon the provisions of this Agreement and on any subsequent agreement or supplement hereto and not upon rights or priorities otherwise available under the Compact or under state or federal law.

2. In periods of drought or otherwise limited water supplies, the Tribe and the Corporation will be required to limit withdrawals of surface water or groundwater from the Zone of Influence, as

the case may be, so that available respective ground or surface supplies are shared equitably between them. The site specific abundance of water supplies available to the Tribe or the Corporation may allow a greater withdrawal of water by either so long as withdrawal from a particular supply does not inequitably limit the other.

3. In order to achieve agreed methods and amounts of withdrawal within the Zone of Influence of available water supplies as specified in Paragraphs 1 and 2 above, site specific ground water criteria for well placement, construction, pump type, pump depth and operation and criteria for surface water withdrawal works shall be established by a subsequent supplement to this Agreement. Identification of the Reservation lands comprising part of the Zone of Influence and site specific criteria described above shall be based upon pump test data acquired by the Corporation within its land and pump test data acquired by the Tribe within the Reservation. The Tribe shall perform a pump test in the general vicinity of the Northwest Quarter of Section 23, Township 48 South, Range 34 East, and acquire the data therefrom no later than August 15, 1987. In the event that the Tribe does not acquire data from the Reservation by August 15, 1987 then the Tribe's portion of the Zone of Influence and site specific criteria shall be based upon test data acquired by the Corporation from its land and other existing data, including data compiled by the South Florida Water Management District from test wells on Reservation lands. The Zone of Influence and specific criteria based upon this data will be modified, if necessary, based upon further data acquired by the Tribe from the Reservation, provided, however, that operational or construction modifications will not apply to wells or surface water works constructed in accord with the original criteria.

4. If operating experience in all or any portion of the Zone of Influence demonstrates that any specific operating criteria such

as withdrawal rates developed under this agreement for wells and withdrawal works are overly or underly restrictive and require modification by relaxing or increasing restrictions to achieve the intent and purpose of this Agreement, then such criteria may be modified by agreement.

5. In the event of failure to reach subsequent agreement required under Paragraphs 1 and 3, the matter shall be resolved by binding arbitration conducted by a panel of three technical experts applying the technical standards established by these paragraphs and any supplements to this Agreement and evaluating the data offered by either party for these purposes. If a subsequent agreement has not been reached within ninety days (90) after identifying data upon which determinations of the Zone of Influence and site specific criteria will be based, then arbitration shall commence on the request of either party. The Tribe and the Corporation shall each select one panel member and a third panel member shall be selected by the two panel members previously selected by the parties. Upon the failure of the two panel members to select a third, this panel member shall be appointed by the U. S. District Court for the Southern District of Florida ("The Court"). All determinations shall be made by majority vote of the panel members. The decision of the arbitration panel shall be made in writing at the time fixed by the panel or ordered by the Court. All expenses of the panel shall be paid equally by the parties. Upon application of a party, the Court shall vacate a decision of the panel that was procured by fraud, corruption or action which is beyond the powers of the panel. Alternatively, upon application made within sixty (60) days of a written decision, the Court may modify or correct a decision when there is an evident miscalculation of figures or mistake in the description of any thing or property referred to in the arbitration decision. Upon confirming or modifying a decision of the panel, the Court shall enter a judgment which may be enforced as any other judgment.

6. Any arbitration decision or subsequent agreements needed to complete or amend this Agreement shall not affect the authority of the District to evaluate work plans or permit applications under provisions of the Compact or state law or the rights of substantially affected third parties from participating in District proceedings.

7. This Agreement shall be effective as of the date of execution hereof and, upon the Compact becoming effective, shall remain in effect so long as the Compact is in existence. In the event the Compact is not approved or finally effective or held to be invalid, this Agreement will remain in effect and the Corporation and the Tribe shall make their best efforts to cause this Agreement to be binding and effective, including but not limited to, making efforts to obtain any required approval of any government agency or body.

8. The parties agree to share all data in their possession on the lands located within the Zone of Influence, including but not limited to, data from test wells. Neither will disclose data provided to any other private or public person or entity.

DATED this 15th day of May, 1987.

WITNESSES:

Agnes Billie-Motlow

SEMINOLE TRIBE OF FLORIDA

By: ______________________
James Shore, General Counsel

WITNESSES:

Judy Rios

UNITED STATES SUGAR CORPORATION

By: ______________________
John B. Boy, President

Agreement Between the Seminole Tribe of Florida and Lykes Bros., Inc. on Withdrawal of Groundwater on the Brighton Reservation and the Lykes Bros.' Land Adjacent and Contiguous Thereto

The parties to this Agreement, the Seminole Tribe of Florida (the "Tribe") and Lykes Bros., Inc. (the "Corporation"), made under authority of Part VI, Section A of the Water Rights Compact among the Seminole Tribe of Florida, the State of Florida and the South Florida Water Management District, agree as follows:

1. The determination, as between the parties, of limitations on groundwater withdrawals on the lands owned by the parties on May 15, 1987 within the Indian Prairie Basin as described in Rule 40E 21.691(6)(a) Florida Administrative Code (1987) shall be based upon the provisions of this Agreement and on any subsequent agreement between them and not upon rights, priorities or preferences otherwise available to the Tribe or the Corporation under the Compact or under State or Federal law, and neither party shall have standing to object to groundwater withdrawals made or proposed by the other on such lands, provided, however, that each party shall be bound by the rules set forth in section 3 of this Agreement for lands within the "well placement and set-back zone" defined below.

2. The lands of both parties in the following sections abutting the common boundary between the Tribe and the Corporation lands delineated on the map attached hereto, are designated

Exhibit B

as the "well placement and setback zone" of groundwater withdrawals:

> Sections 19, 30, 31, Township 38 South, Range 33 East; Sections 24, 25, 34, 35, 36, Township 38 South, Range 32 East; Sections 1, 2, 3, 4, 9, 10, 16, 17, 21, 22, 27, 28, 33 and 34, Township 39 South, Range 32 East; Sections 4, 5, 8, 9 and 16, Township 40 South, Range 32 East.

3. In the "well placement and setback zone" defined in Section 2 of this Agreement, the following rules will be observed in development of groundwater in the Floridan and Shallow Aquifers:

(a) Floridan Aquifer (greater than 150 feet)
1000 feet set-back from boundary,
no more than 2 wells per quarter section.
(b) Shallow Aquifer (less than 150 feet)
700 feet set-back from boundary,
no more than 4 wells per quarter section.

4. Any wells presently existing in the "well placement and setback zone" shall be exempt from the limitations imposed by Section 3 of this Agreement, provided that no new wells may be added in any quarter section if they would cause the total

new and existing wells to exceed the limit defined in Section 3 in that quarter section. However, the parties agree to use best efforts to operate all presently existing wells in such manner as to minimize interference with the groundwater operations of the other party.

5. Construction of wells shall follow applicable District requirements, including but not limited to requirements as to casing.

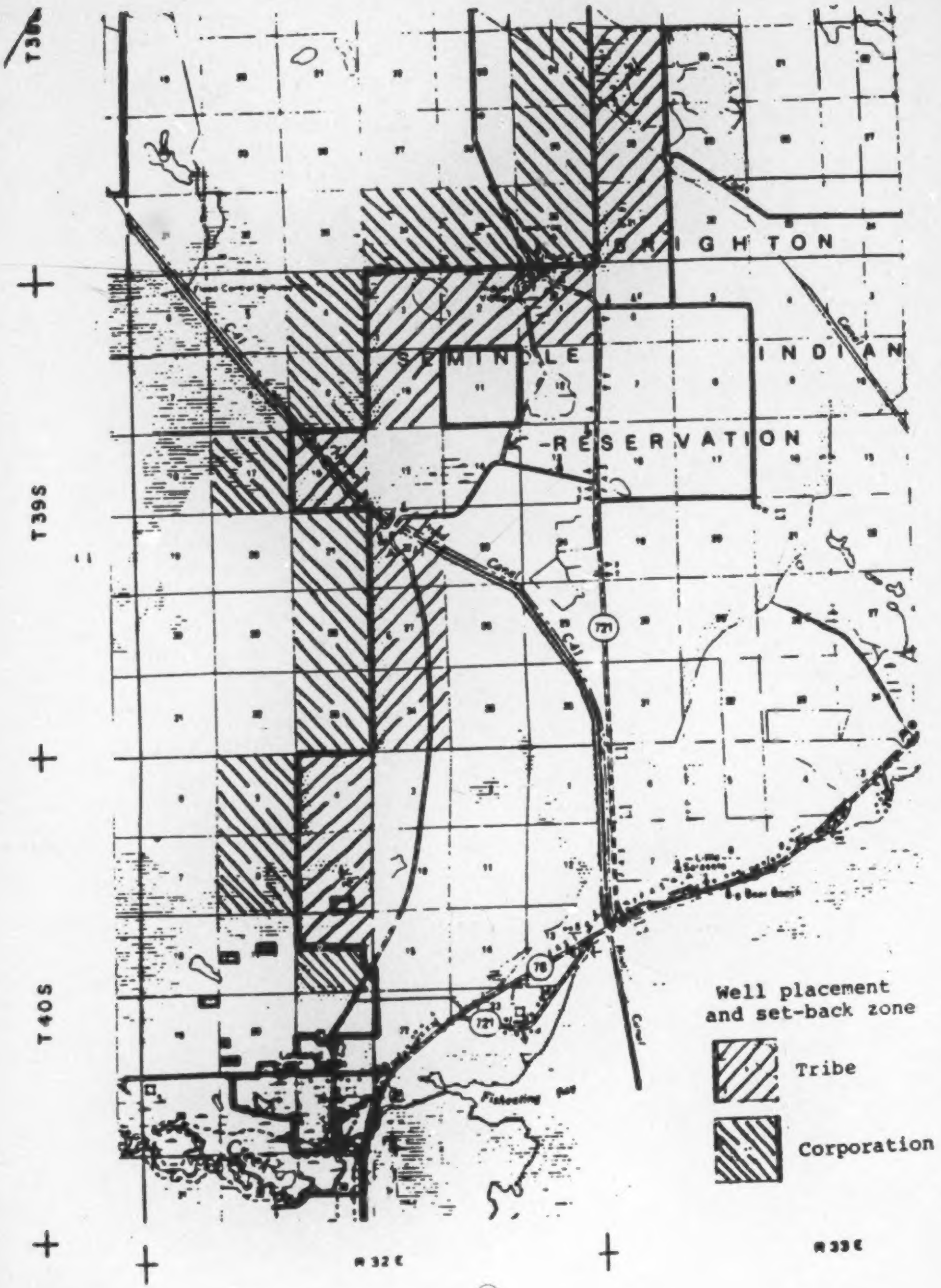
6. This Agreement shall be retroactively effective as of May 15, 1987 and, as between the parties, shall have the force and effect of the Compact.

7. It is understood that this Agreement can have no force and effect until approved by the Governing Board of the South Florida Water Management District, adopted by the Seminole Tribal Council and until the Compact which authorizes it is finally approved by Congress. The parties agree that the Agreement must be submitted for approval in the form approved by the Governing Board on May 15, 1987, and that no change in the Agreement will be effective unless agreed to by both parties.

This Agreement will be null and void on December 31, 1988 unless it has received all necessary approvals and/or ratifications by that date.

Lykes Bros., Inc.
By: Tom L. Rankin, President

Seminole Tribe of Florida
By: James Shore, Esq.
General Counsel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Well placement
and set-back zone
Tribe
Corporation